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Supreme Court, U.S.
FILED

97 1860 MAY 18 1998

No. 97-___

OFFICE OF THE CLERK

In The

Supreme Court of the United States

October Term, 1997

◆

ROBERT W. KEARNS,

Petitioner,

v.

WOOD MOTORS, INC., *et al.*,

Respondents.

◆

On Petition For A Writ Of Certiorari
To The United States Court Of Appeals
For The Federal Circuit

◆

PETITION FOR A WRIT OF CERTIORARI

◆

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165 pp

QUESTIONS PRESENTED

1. Whether a judgment awarded Petitioner in 1992, resulting from a patent infringement civil action, can be held by the United States District Court for several years; and used to disburse funds by that Court for sanctions and legal fees.

2. Whether the raising, by the Court below, of the merits of Petitioners Constitutional argument, not before that Court, in an appeal against sanctions; permits Petitioner to present that Question in this Petition for a Writ of Certiorari.

3. Whether Article I section 8 of the United States Constitution, reserving exclusive rights for limited times, requires that the 17 year time limitation of former 35 U.S. Code 154 be tolled when patent infringers violate a patent for over 17 years; and whether raising that issue is frivolous.

LIST OF PARTIES

The petitioner is Robert W. Kearns, Ph.D., manufacturing-inventor.

The respondents are:

Wood Motors, Inc.,
AB-Volvo,
Alfa Romeo S.p.A.,
American Motors Corp.
Audi NSU Auto Union, A.G.,
Automobiles-Citroen, S.A.,
B-L, PLC (British Leland),
Bayerische Motoren Werks, A.G.,
Daimler-Benz Aktiengesellschaft,
Dr. Ing. h.c.f. Porsche A.G.,
Ferrari, S.p.A.,
Fred Lavery Porsche,
Fuji Heavy Industries, Ltd.,*[1]
General Motors Corporation,*[2]
Group Lotus Cars Co.,
Honda Motor Co.*,
Isuzu Motor Co., Ltd.,*
Mitsubishi Motors Corp.,*
Nissan Motor Co., Ltd.,*
Officiene Alfiere Maserati,
Peugeot, S.A.,
Regie Nationale Renault,
Rolls Royce Motors, Ltd.,
Saab-Scania AB,
Toyo Kogyo Co., Ltd. (Mazda),*
Toyota Motor Co., Ltd.,*

---

[1] * = once began a separate trial — *See*, Exhibit 04.

United Technologies Corp.,
United Technologies Automotive, Inc.,
Volkswagen Werke A.B. Wolfsburg,
Dealers in the Detroit area:
Barnett Pontiac-Datsun, Inc.,
Bavarian Motor Village, Ltd.,
Dalgliesh Cadillac-Peugeot,
Joe Dwyer Subaru Volvo, Inc.,
Falvey of Troy,
Grosse Pointe AMC-Jeep Renault,
La Fontaine Toyota,
Seaway Motors, Inc.,
Sports Car Exchange, Inc.,
Tamaroff Buick-DMC-Honda-Rolls Royce,
Ford Motor Company**[2]
Chrysler Corporation**[2]
American Motors Corporation**[2]
with

SWF-SPECIALFABRIK fur
AUTOZEBEHOR GUSTAV RAU G.m.b.H.,
a corporation of the Federal
Republic of Germany
Plaintiff,

v. Civil No. 79-CV-74451
Honorable Avern Cohn

ROBERT W. KEARNS,
Defendant.

also, awaiting a civil action.

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[2] per the argument on App. S *infra* 116a & 35 U.S. Code § 271(d)(3).

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EXTERNAL APPENDIX

Informal Brief of Appellant, 1b

Kearns v. *Wood Motors Inc, et al.*
Court of Appeals for the Federal Circuit,
No. 97-1565 1b

1. Has the appellant ever had another case in this court? _ Yes _ No If so, state the name and number of each case.

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2. Did the trial court incorrectly decide or fail to take into account any facts? _ Yes _ No If so, what facts? 1b

3. Did the trial court apply the wrong law? _ Yes _ No If so, what law should be applied? 1b

4. Did the trial court fail to consider important grounds for relief? _ Yes _ No If so, what grounds? 1b

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Dr. Kearns' Inventor's Logbook:

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on October 2, 1963 83b

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'836 "1", "2", "3", "4" technology
on January 16, 1965

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SUPERSEDEAS BOND

President Reagan's Commission on Industrial 97b
Competitiveness
Report of January 1985 Volume I & II entitled
Global Competition - The New Reality
(Gov't. Printing Office)

Kearns' U.S. Patent 3,351,836 ("'836") technology 98b
"1" = wiper motor driven switch;
"2" = capacitor between motor driven switch and input to transistor;
"3" = timing resistance connected to junction capacitor and input to transistor; and
"4" = transistor driving wiper motor.

Ford Motor Company's admitted infringed, 99b
Ford jury found:
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to be valid

Chrysler Corporations' stipulated valid on 100b
Ford validity trial with four out of four of
Kearns' IWWS U.S. Patents found to be
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installed and exported product

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Honorable Julian Abele Cook, Jr.
Chief Judge
United States District Court
Congress of the United States
House of Representatives
Washington, D.C. 20515-2211

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MEMORANDUM 155b

TO: Mr. Paul Drolet
ORG: House Subcommittee on Administrative Law and Governmental Relations
FROM: Eric Feiler
DATE: July 21, 1993

Reader please note: Dr. Kearns is not the Mr. Kearns described therein. Dr. Kearns had no knowledge of this activity.

District Judge Cohn dismissed Dr. Kearns' *Kearns* v. *General Motors Corp.* Civil Action for a 'remedy' for patent infringement under 28 U.S. Code § 281 then pending in Detroit, Michigan on July 21, 1993.

TABLE OF AUTHORITIES

CONSTITUTIONAL PROVISION

Article I

§ 8 The Congress shall have the power

...

cl 8 To promote the progress of science and useful arts by securing for limited times to authors and inventors the exclusive right to their discoveries;

... .

STATUTORY PROVISIONS

35 U.S. Code

§ 102. Conditions for patentability; novelty and loss of right to patent

... .

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of the application for patent in the U.S., or

July 19, 1952, c. 950, § 1, 66 Stat. 797.

§ 122. Confidential status of applications

Applications for patents shall be kept in confidence by the Patent and Trademark Office and no information concerning the same given without authority of the applicant or owner unless necessary to carry out the provisions of any Act of Congress or in such special circumstances as may be determined by the Commissioner. As amended Jan. 2, 1975, Pub.L. 93-596, § 1, 88 Stat. 1949.

§ 154. Contents and term of patent

Every patent shall contain a short title of the invention and a grant to the patentee, his heirs or assigns, for the term of seventeen years, subject to the payment of fees as provided for in this title, of the right to exclude others from making, using, or selling the invention throughout the United States, referring to the specification for the particulars thereof. A copy of the specification and drawings shall be annexed to the patent and be a part thereof.

As amended July 24, 1965, Pub.L. 89-83, § 5, 79 Stat. 261; Dec. 12, 1980, Pub.L. 96-517, § 4, 94 Stat. 3018.

§ 281 Remedy for infringement of patent

A patentee shall have remedy by civil action for infringement of his patent. July 19, 1952, c. 950, § 1, 66 Stat. 812.

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IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1997

ROBERT W. KEARNS,
Petitioner,
v.
WOOD MOTORS, INC., *et al.,*
Respondents.

On Petition For A Writ of Certiorari
To The United States Court of Appeals
For The Federal Circuit

Dr. Robert W. Kearns respectfully petitions for a Writ of Certiorari to review the Judgment of the U.S. Court of Appeals for the Federal Circuit.

OPINIONS BELOW

The Opinions [App. A infra 1a] of the Court of Appeals for the Federal Circuit ("CAFC") are unreported. The ORDER and Judgments of the District Court [App. B infra 5a] are unreported.

JURISDICTIONAL STATEMENT

The judgment of the Court of Appeals for the Federal Circuit was entered on January 8, 1998. The petition for rehearing was denied and a suggestion for a hearing *in banc* was declined on February 17, 1998. The jurisdiction of this court is invoked under 28 U.S. Code § 1254(1).

The notifications required by Rule 29.4(b) were not made by the Court of Appeals for the Federal Circuit.

Having notified the Clerk of the Court of Appeals for the Federal Circuit of the need without affect and being without the authority to make the required notifications required by Rule 29.4(b), Robert W. Kearns, Ph.D. *Plaintiff and Appellant*, *Pro Se*, did include the Attorney General and the Solicitor General in each of his Certificates of Service accompanying each paper he filed.

CONSTITUTIONAL PROVISION INVOLVED

Article I

Section 8 The Congress shall have power

> . . . .
>
> To promote the progress of science and useful arts by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries;
>
> . . . .

STATUTORY PROVISION INVOLVED

Title 35 U.S. Code

§ 154. Contents and term of patent

Every patent shall contain a short title of the invention and a grant to the patentee, his heirs or assigns, for the term of seventeen years, subject to the payment of fees as provided for in this title, of the right to exclude others from making, using, or selling the invention throughout the United States, referring to the specification for the particulars thereof. A copy of the specification and drawings shall be annexed to the patent and be a part thereof.

As amended July 24, 1965, Pub.L. 89-83, § 5, 79 Stat. 261; Dec. 12, 1980, Pub.L. 96-517, § 4, 94 Stat. 3018.

STATEMENT OF THE CASE

Petitioner, a registered Professional Engineer[3] in Michigan, founded Kearns *Engineers* in 1957 selling his Computer Central© electronic products throughout the USA, and by means of export licenses issued by the U.S. Department of Commerce, exported said products to France and Japan. [Ext App 39, 73b] He invented Windshield Wiper System with Intermittent Operation in 1963. [Ext App 54b] Over time he received 21 U.S. Patents[4] on these discoveries alone.

Beginning on March 31, 1978, he filed seven (7) Complaints for infringement, including imports, against 43 members of the automobile assembly industry. In 1992 and 1994 he received, respectively, patent infringement judgments against Ford Motor Company and Chrysler Corp.. Dr. Kearns was awarded more than 18 million dollars after costs against

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[3] in Electrical Engineering, 1957; Mechanical Engineering, 1958.

[4] Dr. Kearns' U.S. patents are:

(yrmoda) (U.S. patent no.)
* = windshield wiper with intermittent operation patents.

601108 2,959,347; 640303 3,123,753; 660705 3,259,706;
671107*3,351,836; 670114*3,422,331; 691209*3,483,459;
691209*3,500,159; 700915*3,529,227; 710216*3,564,374;
710406*3,573,584; 710525*3,581,178; 710601*3,582,747;
710713*3,593,090; 710831*3,602,790; 710914*3,604,910;
730320 3,721,115; 730417*3,728,603; 730605*3,737,750;
731120*3,774,091; 740312*3,796,936; 750408 3,876,919;
750826*3,902,106; 820713*4,339,698; 850115 4,494,059;
850115 4,454,107; 850723 4,531,066; 851001*4,544,870;
690805*3,458,589;720215*3,643,145;

Chrysler[5].

A. The Supersedeas Bond

The Supersedeas Bond [App. K *infra* 51a-54a] [Ext App 93b] that Chrysler presented to Dr. Kearns in order to go to appeal, states:

> "[A]s sureties, acknowledge that we are jointly and severally obligated and bound to pay to Dr. Robert W. Kearns ("Kearns") the sum of $18,740,465.43 ... as adjudged and directed by the United States Court of Appeals for the Federal Circuit. ... ."

The Supersedeas Bond, as shown on page -2-, was approved:

(1) by Chrysler Insurance Company by the signature of it's Attorney-in-Fact M.B. TATE;

(2) by SAFECO Insurance Company of American by the signature of it's Attorney-in-Fact Alice Albano;

with both of the above signatures notarized as shown.

(3) "The foregoing bond is approved as to sureties and amount.

____

and,

(4) "The foregoing bond is hereby approved by the Court this 12 day of July, 1993 to stand as a supersedeas staying execution of the judgment until the final determination of the appeal in the above matter.

s/Avern Cohn
U.S. District Court Judge

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[5] *Kearns* v. *Chrysler Corp.*, 32 F.3d 1541, 1544 (Fed. Cir. 1994)

BY: s/Judy Cassady
Deputy Clerk

by U.S. District Court Judge Cohn
as witnessed by Judy Cassady, Deputy Clerk
for the Judicial Branch.

Dr. Kearns was not approached, nor asked, nor did he, approve the Sureties and amount in space (3).

Since the CAFC Circuit Judges, LOURIE, RADER, and SCHALL, Affirmed the U.S. District Court Eastern District of Michigan, Judgment on August 11, 1994, which was published, *Kearns* v. *Chrysler Corp.*, 32 F.3d 1541 (Fed. Cir. 1994), why wasn't said Supersedeas Bond:

> "[T]o allow a stay of enforcement of the judgment by Kearns during the pendency of Chrysler's appeal" paid by those who signed and acknowledged that "we are jointly and severally obligated and bound to pay to Dr. Robert W. Kearns ("Kearns") the sum of $18,740,465.43 under the conditions set forth below, to be paid to Kearns or his assigns or successors."

paid to Dr. Kearns on August 12, 1994; or, soon now, with full interest as due? Dr. Kearns' 'honor' was & is at stake! *See*, The Washington Post, "*Patent System a Cruel Hoax on Inventors and Hurts U.S.*" [Business & Finance, Dec. 20, 1982] (*See, library.*) as well as, Letters to the Editor of the Washington Post: *Wheels of Invention*, of December 31, 1982; and, Dr. Kearns' reply: *Giving the Inventor His Patented Due*[6] published January 3, 1983. *infra* [Ext App, page 82b.]

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[6] "Issuance of letters patent is merely *prima facie* evidence of patentability, and final determination of such question must await adjudication of court in which patentability is properly challenged." *Quaker State Oil Refining Co.* v. *Talbot* Thus the inventor does not receive his consideration for entering into the patent agreement until *after* the court action. Why then does the Patent Office administration take the public's

Instead of the Chrysler Sureties paying the adjudged money to Dr. Kearns as required by both the Supersedeas Bond and the Court of Appeals Judgment [*Kearns* v. *Chrysler Corp.*, 32 F.3d 1541 (Fed. Cir. 1994)] the Sureties turned the funds over to the U.S. District Court for the Eastern District of Michigan; and these funds are still retained by that District Court. The Court has been dispensing these funds in the intervening years for sanctions against Petitioner, for legal fees, and other disbursements. The $18.7 million account is now down to nominally 10 million dollars [App. Q *infra*, 111a, 112a ¶6].

B. Proceedings Below

The present civil action was filed on March 31, 1978 against Wood Motors, Inc., Daimler-Benz Aktiengesellschaft and Porsche, G.m.b.H. Counsel withdrew from the case on February 3, 1987 [App. O *infra*, 80a, 82a, l. 6].

Petitioner attempted to continue this suit, and his numerous other pending suits, *pro se*. Dr. Kearns[7] conduc-

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consideration for entering into the patent agreement *before* court action?

[7] Dr. Kearns was the faculty moderator for the student branch of the Professional Engineers in the College of Engineering of Wayne State University. Dr. Kearns taught the Engineering Mechanics curricula in the Graduate School and the College of Engineering as an Associate Professor there for ten years. After studying in 1957 and 1958 at the International School for Nuclear Science and Technology at Argonne National Laboratories, Dr. Kearns also taught the Control of Nuclear Reactors and Use of Radioactive Isotopes in the Graduate School. His firm Kearns and Law *Engineers* built the control console for the University of Michigan's atomic reactor. [Ext App xx]

After the race riots in the summer of 1967, wherein a large portion of Detroit was burned, Mayor Cavanagh asked Dr. Kearns to serve the City of Detroit as its Commissioner of Buildings and Safety Engineering where he led: 23 professional engineers; licensed journeyted the damages phase of the *Kearns* v. *Chrysler Corp.*, 35 U.S. Code § 281 infringement civil action, *pro se*.

1. Dismissal of All Cases

The U.S. District Court on January 28, 1994 dismissed with prejudice the *Wood* case, and all Petitioner's pending cases with the then active *Toyota* case, (a Japanese subset of *Ferrari, et al.*), under Fed. R. Civ. P. 41(b). [App. L *infra*, 55a, 56a l. 9]

2. The Sanctions

The Court further issued an order on payment of sanctions on March 11, 1996 of $198,310.83 in the previously dismissed *Wood* case [App. Q *infra* 111a, ¶1] & [App. O *infra* 80a, 83a ¶2, 85a, l. 17].

Petitioner appealed this sanction order to the Court of Appeals for the Federal Circuit. That Court affirmed the sanctions in a *per curiam* opinion decided January 17, 1997 [App. A *infra* 1a, 2a; App. O *infra* 80a]; and then sanctioned Petitioner for a frivolous appeal in the amount of $48,075.94 for cost and legal fees [App. A *infra* 1a, 1a].

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men inspectors and clerks totally 460 persons. His Department was revenue supported with a budget of nominally $85 million annually. He negotiated with seven journeymen unions. He served as Commissioner in the administrations of both Mayors Cavanagh and Gribbs.

Dr. Kearns also served Michigan Governors Romney and Milliken on special commissions.

In the '70s Dr. Kearns was the principal investigator for the U.S. Department of Federal Highways at the National Institute of Science and Technology located in Gaithersburg, MD near Washington, D.C. where he developed and led the team operating our Nation's primary standard for the measurement of the skid resistance of highways under wet weather conditions.

Nominally 55,000 persons die in automobile accidents annually with more than half dying in wet-weather accidents when the weather is not wet half the time.

The U.S. District Court paid the sanctions from the funds still held by the Court in Petitioner's name. Petitioner appealed this order that used his funds, to the U.S. Court of Appeals for the Federal Circuit.

C. Raising of the Constitution

The Court of Appeals denied this appeal on January 8, 1998, and denied a petition for rehearing on February 17, 1998. [App. R *infra* 115a] In its *per curiam* opinion, the only issue, noted by the Court as being before them, was whether the sanctions should be paid out of Petitioner's funds still held by the District Court. However, the Court below went into a lengthy discussion on the merits of this *pro se* litigant's argument, concluding that: "[D]r. Kearns interpretation of the patent clause of the Constitution is not legally sound ... ." [App. A *infra* 1a, 3a]

While the Court below stated that that issue was not before them, its critical and expanded discussion of Petitioner's legal and Constitutional argument *may* permit Petitioner to raise this issue in this petition, as a legally sound position and not a frivolous one.

REASONS FOR GRANTING THE PETITION

I. The Control of Petitioner's Funds by the U.S. District Court for the Eastern District of Michigan since 1994 is arbitrary and a denial of due process.

Doctor Robert W. Kearns, a former Wayne State University Engineering Professor, who served with the Office of Strategic Services (OSS) during WWII, and now serves as a Director of the Veterans of OSS and the General Donovan Memorial Foundation, was the inventor of the electronic windshield wiper with intermittent operation.

It took Dr. Kearns almost thirteen years of law suits before he had the opportunity to successfully establish that his patents had been infringed by automobile companies. He faced seven (7) Complaints of 43 defendants. The *Ford* and *Chrysler* cases were the only two cases brought to trial, *see*, *Kearns* v. *Chrysler Corp.*, 32 F.3d 1541 (Fed. Cir. 1994). He was awarded over 18 million dollars in the Chrysler case, the funds at issue here, *supra*. After a dispute with his then *Ford* attorneys, Dr. Kearns dismissed them over his right to seek equitable relief in accord with *Roche Products* v. *Bolar Pharmaceutical Co.*, 733 F.2d 858, 862 (Fed. Cir. 1984) to expand his electronic's manufacturing and exporting firm.

Dr. Kearns has appeared *pro se* since the damages phase of *Kearns* v. *Chrysler Corp.* 32 F.3d 1541 (Fed. Cir. 1994). The complex and tortured procedural history of these cases raise troubling questions of the treatment by the Courts of this *pro se* litigant. [Ext App 112b] While none of the decisions and sanctions arising out of the *Chrysler* case, and earlier sanctions in the instant case, are before this Court, a background may help clarify the petition-er's argument on the questions presented. This Court, of course, has traditionally had the authority, where it deems necessary, to exercise its jurisdiction in its supervisory power over the federal courts, *see*, *Mc Nabb v. U.S.*, 318 U.S. 332 (1943), or where this Court believes there is a gross miscar-riage of justice, *see*, *Thompson v. City of Louisville*, 362 U.S. 199 (1960).

This *pro se* litigant has been sanctioned by the U.S. District Court for the Eastern District of Michigan in the *Chrysler* case, $667,322 in 1994 to pay legal fees of opposing counsel, [App. H *infra* 44a, 45a "burdening Chrysler attorneys with reading too many papers on 'equitable relief!'] [Ext App 1b-30b, 34b, 35b, 39b, **41b**, among other sanctions; and in *Wood Motors, Inc., et al.* the instant case, $198,310 [App. Q *infra* 111a ¶ 1 and App. O *infra* 80a, ¶ 2; 85a l. 17] for

discovery procedure violations, while in the proceedings of August 18, 1992, the district court admitted Dr. Kearns was innocent in that his son, Dennis, only "received" and did not "purloin" *Wood* documents, that include the *Wood* parties own damaging statements against their interest.
[App. G *infra* 21a]

Dr. Kearns appealed the *Wood* sanction, *pro se* and was sanctioned by the U.S. Court of Appeals for the Federal Circuit a further $48,075.94 for a frivolous appeal.
[App. A *infra* 1a, 1a]

The $18.7 million judgment awarded Dr. Kearns in the Chrysler case in 1994, after being used by the District Court for: sanctions; legal fees; and other awards, leaves only about $10 million left of Dr. Kearns' judgment. [App. Q *infra* 111a, 112a ¶ 6]

Inasmuch as Dr. Kearns has never received a full accounting of his funds, he does not know what is the exact amount left in his name.

Under these circumstances Dr. Kearns, bewildered as a *pro se* litigant, on appeal of the recent sanction, has even argued:

> that funds held in his name by the Court cannot be his; that they must still belong to the Chrysler Sureties; that he is still owed his full Supersedeas Bond amount on his Judgment from the appeal bond Sureties [App. K *infra* 51a-54a]; and that, his "exclusive right" "for limited times" has not started under Const. Art. I § 8 cl 8!.
>
> [App. S *infra* 116a - 130a]

In 1994 the United States District Court for the Eastern District of Michigan dismissed with prejudice the instant case, and all of Dr. Kearns' pending cases under Fed. R. Civ. P. 41(b). [*See*, *Kearns* v. *General Motors Corp.*, 31 F.3d 1178

(Fed. Cir. 1994, *cert denied* _ U.S. _, 15 S.Ct. 1105, 130 L.Ed2d 1071 (1995).] [*See*, Ext App, Ext App 119b - 155b.] [*See*, *Kearns* v. *General Motors Corp.*, 94 F.3d 1553 (Fed. Cir. 1996).]

Indeed, dismissal of an action with prejudice under Fed. R. Civ. P. 41(b) is an extreme sanction and such a harsh penalty that it should be imposed only in extreme circumstances. *Dahl* v. *City of Huntington Beach*, 84 F.3d 363, C.A. 9 (1996), *Jackson* v. *City of New York*, 22 F.3d 71, C.A. 2 (1984).

Inasmuch as the only two cases actually tried by Dr. Kearns, *Ford* and *Chrysler*, concluded with unanimous verdicts in his favor, *Kearns* v. *Chrysler*, *supra*, it is evident that many, if not all, of the cases dismissed, [Ext App 98b - 106b] if professionally handled, could have resulted in significant judgments.

While this decision is not subject to collateral attack or before the Court; it indicates how severely this *pro se* litigant has been judicially sanctioned.

The Petitioner, Dr. Kearns has been a difficult *pro se* litigant for the Courts below to deal with. [App. P *infra* 89a & App. M *infra* 61a] His memoranda of law and briefs filed in the Courts below (and previous Petitions for Writ of Certiorari filed in this Court) were not artfully drafted, and are indeed difficult to read or understand fully without a mathematical background; particularly, the Constitutional issue that he has attempted to raise in all the Courts below. [Ext App 1b - 32b] [App. S *infra* 116a -130a] [Ext App 41b - 44b]

This has resulted in judicial impatience; [App. L *infra* 55a; App. M *infra* 61a, 65a] and is one of several reasons this *pro se* litigant has been so severely, and so often, sanctioned.

The record and transcripts in this case [Ext App 112b] are replete with charges by the Courts below on Dr. Kearns' papers. While again, those issues are not before this Court, in fairness to Dr. Kearns certain facts should be noted[8].

Much of Dr. Kearns' difficulties with discovery violations, and lack of trial preparation in general, charged by the lower Courts, were due to one *pro se* litigant competing against numerous lawyers at each law firm. Their parallel: requests for discovery; conflicting hearing dates; the usual *pro se's* initial lack of know-ledge of the Federal Rules of Civil Procedure; was com-pounded by the complexity of his numerous transistor-ized-patent law cases waiting for trial. The Courts be-low have considered him a *pro se* litigant who can have an attorney, but refused to do so [App. D *infra* 16a].

This charge is not quite accurate. Many patent attorneys approached had a conflict; (as they were re-tained by one or more of the many automobile corpora-tions named as defendants in the pending cases of Peti-tioner). In 1992, after seeking patent counsel with trial experience, but, without conflicts of interest, Dr. Kearns interviewed 13 law firms in traveling from Los Angeles in the West; from Chicago to Pittsburgh in the Mid-West; and from Georgia to Boston in the East, without success. With but two weeks remaining before the Chrysler damage phase trial —— Dr. Kearns realizing, he couldn't explain all the transistor patent claim technology in two weeks, conducted the damage phase of the *Kearns* v. *Chrysler Corp*. trial, *pro se*, before the jury.

---

[8] One serious charge and finding made by Judge Pratt, was that Dr. Kearns conspired with his son to obtain documents from the attorneys' representing *Wood Motors, Inc.*, which was the basis for the sanction in the instant case. Dr. Kearns never had an opportunity to establish that he had not so conspired. Successor Judge Cohn admitted Dr. Kearns' innocence at a later proceeding on August 18, 1992. [App G *infra* 21a, 42a] Indeed, it is clear he was innocent of the alleged discovery violation as he actually filed these documents with his court papers in the *Wood Motors, Inc.* case.

Dr. Kearns did not have sufficient time to find a lawyer: technically trained; free of conflict; with patent trial experience; who would also argue his equitable and Constitutional issues. [App. D *infra* 16a]

Therefore, the sanctions of case dismissals, and large financial sanctions against this *pro se* litigant do raise troubling questions as to arbitrary judicial actions.

The use of Dr. Kearns funds, resulting from his judgment for patent infringement, without his consent, by the District Court, which *is* the issue before this Court, should be prohibited.

Further, the District Court should give a compl-ete accounting to Petitioner of all the funds: total, calcu-lated with prejudgment interest, due on the jury award; amounts used for Court costs; then, those amounts plac-ed with the Clerk; the interest earned; and, the reason/sanction for each disbursement.

II. Decision of the Court of Appeals reopened the Constitutional issued raised by Petition in his previous appeal.

The United States Court of Appeals for the Federal Circuit in its Per Curiam opinion of January 8, 1998, had before it one issue. Dr. Kearns appealed *pro se* the order of the District Court directing payment of sanctions imposed, by the Court of Appeals in a previous *pro se* appeal. The previous appeal, found frivolous, was from another sanction imposed by the U.S. District Court at an earlier date. Petitioner's appeal in the instant case was to protect the use of his money, held by the District Court (discussed, *supra*,) to pay this most recent sanction of over $48,000. [App. A *infra* 1a]

Petitioner, in this appeal, also raised his Constitutional issue, which he has consistently done before every court he has appeared. [App. N *infra* 69a; App. S *infra* 116a] Professor H.W. Mergler, Ph.D., Leonard Case Professor (*Emeritus*) of Electrical Engineering, Case Western Reserve University, Cleveland Ohio endorsed Dr. Kearns' analysis on 6 March 1997 in an *Amicus Curiae Brief* he wrote and urged the Supreme Court to act favorably on his petition. [Ext App 41b]

The Court of Appeals denied Petitioner's appeal, (the use of Petitioner's funds to pay the sanction), but then the Court proceeded to discuss Dr. Kearns' Constitutional argument. Indeed, the majority of the Court's opinion covered this Constitutional issue.

The Court below, concluded that Dr. Kearns' position "[I]s not legally sound ... . [App. A *infra* 1a, 3a]. Presumably, that is one of the reasons Dr. Kearns previous appeal was considered frivolous.

While the Court below opined that that issue was not, at the time, before it; Petitioner suggests that the Court's opinion permits Petitioner to raise this Constitutional issue for such consideration this Court may deem justified.

IIIA. Whether Article I Section 8 of the Constitution tolls the 17 year limitation under 35 U.S. Code § 154 in certain circumstances.

Dr. Kearns' position, found not legally sound, which he has attempted to present in all the Courts he has appeared *pro se*, is argued to protect his patents and the patents of all other inventors. [App. N *infra* 69a] Indeed, over the many years of litigation, as a *pro se* litigant he has raised this issue, and sought equitable relief even after the statutory 17 year patent limitation of 35 U.S. Code § 154 had passed.

[App. S *infra* 116a]

App. S *infra* 116a] is the basic brief Dr. Kearns has used in his attempts to get the lower courts to consider his Constitutional issue.

Dr. Kearns position, found not legally sound, by the lower Courts who considered it, is briefly the following.

Article I Section 8 Clause 8 of the United States Constitution states in part:

> To promote the progress of science and the useful arts, by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries. (Emphasis added.)

35 U.S.C. § 154 provides that the limitation of time for a patent was 17 years from date of issue (20 years from date of application after 1994) after that time the invention would be public property.

In Doctor Kearns' case patent infringement started in 1965 by Chrysler and Ford (*See*, *Kearns* v. *Chrysler*, *supra*) and, shortly after, allegedly, by all the other defendant automobile companies named in his numerous patent law suits. Therefore he, and other inventors in this position, had never enjoyed the "exclusive right" to their "discoveries." To remedy this injustice and to comply with the Constitutional mandate, the 17 year limitation of the statute should be tolled during periods of adjudged infringement, so that infringers would not benefit by their denial of the inventor her(is) exclusive right to her(is) discoveries.

Further, such an interpretation of 35 U.S.C. 154 would encourage patent infringers to settle legitimate claims, where as today they know their liability will not exceed any time after 17 years from issuance of the patent (20 years as of 1994).

The Court below in rejecting this interpretation as "unsound" stated, "[W]e are neither empowered nor inclined to reject more than 200 years of legal development at this time." [App. A *infra* 1a, 4a]

Actually, this interpretation of the Constitutional provision of "exclusive right" as applied to the time limitation of 35 U.S. Code § 154, as advocated by Petitioner, has never been really decided by any court; and certainly not this Court. The limitation of 35 U.S. Code § 154, have, of course, been accepted by every Court that considered this section, but they have not considered, as did Dr. Kearns in his mathematical derivations of Offer of Proof, that 35 U.S. Code §§ 102(b) and §122 allow the inventor to disclose his discovery to others before the patent issues, so that the patent could be infringed on the day of issuance[9].

Here the issue is not an extension of the monopoly period, as suggested by the Court of Appeals for the Federal Circuit, but simply denying the patent infringer from benefiting from his violation of the law during the period of his violation and restoring to the inventor and patent holder, h(er)is Constitutional right of exclusivity for limited times to h(er)is discovery. Further, District Judge Ellis III found Dr. Kearns' proofs to be "plausible" and stated, "Take your proofs to the Supreme Court." [Cite later, if required.]

IIIB. Whether the public had the opportunity to
consider "for a limited time" with
"for limited times" prior to their vote for

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[9] Indeed, this Court has noted, over 50 years ago, that to give effect to the public policy behind the statutes granting a monopoly for a limited time (singular), Courts must, in construing this section, stay strictly within the terms of the statutory grants. *U.S.* v. *Univis Lens Co.*, 316 U.S. 241 (1942).

ratification of the Constitution.

The U.S. Constitution was signed on September 17, 1787 —— but was not yet ratified by the States.

Ratification, requiring 9 states, occurred six months later with Virginia (10th) and New York (11th) following in the seventh month. To aid ratification, Hamilton, Madison and Jay wrote *The Federalist* articles, #1 through #85, that were made available to the public in newspapers. *Federalist* #43 was written (nominally) in the third month. Therein, Madison[10], as Publius, wrote:

> "The *fourth* class comprises the following miscellaneous powers:
>
> 1. A power "to promote the progress of science and the useful arts, by securing, for a limited time, to authors and inventors, the exclusive right to their respective writings and discoveries."

With nominally three to four months before ratification yet to pass, the phrase "for a limited time" was published in the newspapers.

In their small community of States, the public had the opportunity to address "for a limited time (singular)" as compared to "for limited times (plural)." Four months after "for a limited time (singular)" was published in their newspapers, the public ratified the words "for limited times (plural)" of the already Founding-Fathers-signed U.S. Constitution Art. I § 8 cl 8. What we do know for sure, that is of importance in this petition, is: "for limited times (plural)" are the words both signed and ultimately ratified by the nine States to start the U.S. Constitution.

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[10] *Great Books of the Western World*, Robert Maynard Hutchins, Editor in Chief. Volume 43. American State Papers The Federalist J.S. Mill William Benton, *Publisher* Encyclopedia Britannica, Inc.

"Of course, I also know that the Constitution itself is what was ratified -— not the founders' intentions.[11]

"It cannot be presumed that any clause in the Constitution is intended to be without effect" *Marbury* v. *Madison*, 1 Cranch 137, 174 (1803).

In Doctor Kearns' case patent infringement started in 1965[12] by Chrysler and Ford, *supra*,

How this Court would resolve this issue if it were before them, and properly briefed is, of course, unknown; but surely the raising of it by the Petitioner in all the Courts below was not frivolous or unsound.

IV. The question presented
is important.

In sum, this case presents an opportunity for this Court to assert its supervisory powers over the lower Courts excessive use of sanctions and punishment of a *pro se* litigant, as well as, correcting possible misuses of judicial power.

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[11] *Interpreting the Constitution* — The Supreme Court and the Process of Adjudication, page 56 by Harry H. Wellington, Sterling Professor of Law at Yale Law School. He was dean of the Law School from 1975 to 1985.

[12] From the transcript of the proceedings on Monday, June 21, 1993 of: *Kearns* v. *Ferrari, S.p.A.* and 29 other Defendants; and *Kearns* v. *General Motors Corp.* before Detroit District Judge Cohn. [Int App xx]

THE COURT: Well, I suppose it's not much satisfaction, but while you haven't provided full employment to America, you've certainly done very well by the patent bar, Dr. Kearns. Whether that gives you any solace or not, I don't know, but you've done very well by the patent bar.

DR. KEARNS: It really doesn't, your Honor, and that was my purpose in filing the papers two weeks ago.

THE COURT: Well, let me put it this way, Dr. Kearns, it's not relevant to what you said, but you now have the ability to appeal the refusal of this Court to give you equitable relief. It's now for the first time postured in a way that you can ask the (Court of Appeals for the) Federal Circuit to say that you're entitled to equitable relief.

Further, this case presents an opportunity to consider a unique Constitutional question concerning the patent law, which would be of major importance to: this inventor; all other patent holders; and the U.S. trade deficit. [App. P *infra* 89a, 106a]

Therefore, the Court should grant the petition.

CONCLUSION

The Petition for a Writ of Certiorari should be granted.

Respectfully submitted,

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410-706-7145
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APPENDIX A

NOTE: Pursuant to Fed. Cir. R. 47.6, this disposition is not citable as precedent. It is a public record. The disposition will appear in tables published periodically.

United States Court of Appeals for the Federal Circuit

97-1565

ROBERT W. KEARNS,

Plaintiff-Appellant,

v.

WOOD MOTORS, INC., *et al.*,

Defendants-Appellees.

DECIDED: January 8, 1998

Before NEWMAN, LOURIE, and BRYSON, *Circuit Judges*.

PER CURIAM.

Robert W. Kearns appeals to this court from an order of the district court for the Eastern District of Michigan directing payment of $48,075.94 in sanctions from funds on deposit for Dr. Kearns in the court's registry. The sanctions were imposed by this court in Dr. Kearns' most recent appeal, which challenged an order directing payment of sanctions imposed by this court. Because the district court committed no error in ordering payment to carry out the judgment of this court. we *affirm*.

BACKGROUND

Dr. Kearns filed an action against Wood Motors, Inc., Daimler-Benz Aktiengesellschaft, and Dr. ING. h.c.F. Porsche A.G. in 1978, alleging infringement of certain patents held by

Dr. Kearns relating to intermittent windshield wipers. The lengthy sequence of ensuing events is described in Dr. Kearns' previous appeal to this court. *See*, *Kearns* v. *Wood Motors, Inc.*, No. 96-1314 (Fed. Cir. Jan. 17, 1997) (unpublished opinion). For purposes of this appeal, we need only note that Dr. Kearns was sanctioned by the district court for discovery abuses, and that the underlying infringement suit was dismissed in 1994. Apart from this case, Dr. Kearns has sued and recovered damages from other automobile manufacturers, including more then $18 million from Chrysler Corporation, *see*, *Kearns* v. *Chrysler Corp.*, 32 F.3d 1541, 31 USPQ2d 1746 (Fed. Cir. 1994). The proceeds of that lawsuit are currently being held for Dr. Kearns in the district court's registry.

In Dr. Kearns' previous appeal in this case, he challenged an order of the district court imposing sanctions against him for discovery abuse and requiring payment of the monetary sanctions from the funds in the court's registry. We upheld the district court's order and further sanctioned Dr. Kearns for filing a frivolous appeal. The frivolous appeal sanctions were assessed in the amount of the fees and costs incurred by the defendants in opposing the appeal. After Dr. Kearns failed to pay the sanctions assessed by this court, the district court entered an order requiring that those funds be disbursed from the funds held in the court's registry for Dr. Kearns from the Chrysler infringement suit. Dr. Kearns' current appeal is from that order of the district court.

DISCUSSION

As in his previous appeal in this case, Dr. Kearns has devoted a substantial part of his brief to arguing issues that are not before us on this appeal. Considerations of finality (Emphasis added.) prevent us from reconsidering those issues that were previously decided by the district court and not appealed. *See*, *Messenger* v. *Anderson*, 225 U.S. 436, 444 (1912); *Trell* v. *Marlee Elecs. Corp.*, 912 F.2d 1443, 1445, 16 USPQ2d 1059, 1060 (Fed. Cir. 1990); *Smith Int'l. Inc.* v. *Hughes Tool Co.*, 759 F.2d 1572, 1576, 225 USPQ 889, 891-92 (Fed. Cir. 1985). Dr. Kearns' opportunity to appeal from the original sanctions order entered by the district court and to argue that the defendants have infringed his patents passed several years ago when those decisions were entered. At this juncture, those issues are not before us.

We do, however, take this opportunity to point out that Dr. Kearns' interpretation of the Patent Clause of the Constitution is not legally sound. The gist of Dr. Kearns' interpretation is that an inventor is entitled to an "exclusive right" to his invention and is not enjoying that exclusive right if anyone else is using the invention without his permission. Recognizing that the Constitution and the Patent Act allow patents for only **"limited times,"** (plural) Dr. Kearns claims that the limited times refer only to those instances when the inventor is in possession of true exclusive rights to the invention, and that any time during which the inventor's exclusive right is abrogated, as when an infringer is also practicing the invention, cannot be counted against the patent's term of years. Dr. Kearns concludes that because his patent rights have been continuously infringed by others, he has never enjoyed true exclusive rights to his invention and the terms of his patents therefore have not yet begun to run. Although recognizing that more than 200 years of legislative enactments and judicial decisions contradict his position, Dr. Kearns maintains that the Constitution requires us to accept his theory. [Proofs!]

The language of the Patent Clause is broad enough to give Congress substantial leeway in fashioning a patent system. Congress made a reasoned choice to provide inventors with patent protection for a period of fixed duration. The remedy for infringement is not to lengthen the term of the patent, but to entitle the inventor to sue for enforcement of his patent rights. A formidable body of patent law has developed under this system, and we are neither empowered nor inclined to reject more than 200 years of legal development at this time. Congress has spoken clearly on this matter, and consistently with the dictates of the Patent Clause.

With respect to the issue that is properly before us, we conclude that the district court did not err in ordering that the sanctions imposed on Dr. Kearns for filing a frivolous appeal be paid from funds being held for him in the court's registry. Dr. Kearns argues that the money is not his, but Chrysler's, and as such cannot be properly disbursed on his account. Because Dr. Kearns has already received a judgment against Chrysler, which has been affirmed on appeal, this argument has no merit. We also note that if Dr. Kearns were correct that the money in the court's registry belongs to Chrysler, only Chrysler would have standing to bring this appeal. Pursuant to the appellees' request no sanctions will be imposed on Dr. Kearns for this appeal.

APPENDIX B

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

ROBERT W. KEARNS,)
Plaintiff,)
vs.) Cause No.
) 78-70642
WOOD MOTORS, INC.,)
DAIMLER-BENZ AKTIENGESELLSCHAFT,)
and DR. ING. h.c.F. PORSCHE A.G.,)
Defendants.)

ORDER ON PAYMENT OF SANCTIONS

This matter came before the Court on the "Verified Motion for Payment of Sanctions Previously Awarded from Funds on Deposit in Court's Registry" ("the "Motion") filed by defendants, Wood Motors, Inc., Daimler-Benz Aktiengesellschaft and Dr. ING. h.c.F. Porsche A.G. (the "Defendants"). The Court, having examined the Motion, held a hearing and being otherwise duly advised in the premises, enters the following FINDINGS OF FACT:

1. On March 11, 1996, this Court (Cohn, J.) entered an order directing payment of sanctions against Dr. Kearns because of his "inexcusable" and "deliberate and studied strategic decision to circumvent the discovery process" be made to the Defendants out of funds on deposit in the Court's Registry for the benefit of Dr. Kearns. Dr. Kearns appealed this order.

2. On January 17, 1997, the U.S. District Court of Appeals for the Federal Circuit affirmed this Court's Order on Payment of Sanctions. Characterizing Dr. Kearns' appeal as "frivolous," the Federal Circuit imposed further sanctions

equal to the reasonable amount of attorney fees and costs incurred by the Defendants in the course of defending against the appeal.

3. On March 19, 1997, the Circuit Court of Appeals for the Federal Circuit entered an Order directing the Defendants to submit a statement showing these costs and fees. The Defendants filed their "Verified Statement of Defendants-Appellees on Fees and Costs" on April 21, 1997. This statement identified attorney fees of $42,123.50 and actual and necessary expenses of $5,952.44 for a total of $48,075.94.

4. On May 28, 1997, the Federal Circuit entered an Order accepting the Defendants' statement of costs and fees as reasonable and directing Dr. Kearns to pay $48,075.94 to the Defendants.

5. On June 6, 1997, the Defendants, by their counsel, sent a letter to Dr. Kearns advising that they would apply to this Court for an order directing payment of $48,075.94 out of the funds on deposit in the Court's Registry if he failed to make payment of that amount before June 16, 1997. Dr. Kearns did not respond.

6. There is approximately $10,000,000 on deposit in the Registry of this Court for the benefit of Dr. Kearns from the proceeds of judgments in related cases.

7. Dr. Kearns has failed to pay the Defendants the award of sanctions and the Defendants should not have to suffer any additional delay.

8. If any of these findings of fact are more properly conclusions of law, the Court adopts and incorporates them as its conclusions.

Based upon these findings of fact, the Court enters the following CONCLUSIONS OF LAW:

1. The full amount of the sanctions previously awarded to the Defendants from Dr. Kearns is due and owing at this time.

2. The sanctions are properly payable to the Defendants out of the funds on deposit in the Court's Registry for the benefit of Dr. Kearns.

3. The Clerk of this Court should disperse to the Defendants, in care of their counsel, the sum of $48,075.94 from the funds in the Court's Registry for the benefit **on** Dr. Kearns. (**Emphasis** added.)

4. If any of the foregoing conclusions of law are more properly findings of fact, the Court finds and incorporates such facts.

THEREFORE, IT IS ORDERED that the Defendants' Motion is GRANTED. The Clerk of this Court is authorized and directed to pay to the Defendants the sum of $48,075.94 out of the funds on deposit in the Court's Registry for the benefit of Dr. Kearns. The payment shall be sent to the Defendants in care of their counsel, Donald E. Knebel, BARNES & THORNBURG, 1313 Merchants Bank Building, 11 S. Meridian Street, Indianapolis, Indiana, 46204.

SO ORDERED.

Date AUG 06 1997 (stamped) AVERN COHN

Judge, United States District Court

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APPENDIX C

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

ROBERT W. KEARNS,
Plaintiff,

vs.

CIVIL ACTION
NO. 8-70642

WOOD MOTORS, INC.
DAIMLER BENZ AKTIENGESELLSCHAFT
and Dr. Ing. h.c.F. PORSCHE A.G.,
Defendants.
_______________________/

MEMORANDUM OPINION AND ORDER REGARDING PLAINTIFF'S MOTION FOR A PRELIMINARY INJUNCTION

Plaintiff Dr. Robert Kearns is the owner of seven United States patents dealing with transistorized windshield wiper control systems. Kearns has brought this action against three defendants for patent infringement in violation of 35 U.S.C. § 271(a) and 271(b). This suit was begun on March 21, 1978. Over 17 months later, plaintiff filed the instant Motion for a Preliminary Injunction. In this motion plaintiff requests that the defendants and their officers and agents be enjoined from infringing one of the seven patents.[1]

The parties have submitted extensive briefs on the propriety of a preliminary injunction in this case and have argued their positions orally. The primary point of contention between the parties concerns the standards which must guide the Court in considering a request for preliminary relief in a patent case.

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[1] The patent at issue is his motion is U.S. Patent No. 3,564,374 an intermittent control device. Dr. Kearns originally applied for this patent on December 1, 1964 and the patent has a date of issue of February 16, 1974.

It is to this threshold question that the Court must first turn.

Plaintiff has argued in its various submissions that the factors which govern the Court's exercise of discretion in every other preliminary injunction request are also fully applicable in patent litigation. Defendants on the other hand suggest that plaintiff in such motions faces a far stricter standard than that, which obtains in the ordinary case.

To a certain extent plaintiff has correctly stated the law. As in other cases, the Court, in deciding such a motion, is required to weigh four factors: plaintiff's probability of success on the merits; the irreparable injury suffered by plaintiff as a result of defendants' actions; the balancing of harm to the plaintiff if such relief is granted relative to the harm suffered by defendants if a preliminary injunction issues; and the public interest in granting or denying the injunction. However, in giving substance to these generalities, federal courts have attached various rules in patent cases which operate to make plaintiff's burden substantially greater.

This stricter standard is particularly apparent in examining in examining plaintiff's probability of ultimate success. To establish this element plaintiff must prove his title to the patent, the patent's validity, and infringement on the part of defendant. but while in the ordinary preliminary injunction request plaintiff would have to prove these elements sufficiently to establish a strong or substantial likelihood of success on the merits. *see e.g., Mason County Medical Ass'n.* v. *Knebel,* 563 F.2d 256 (6th Cir. 1977), this standard is not applicable in patent cases. Instead, the widely accepted rule is that entry of an injunction in patent litigation requires that title, validity, and infringement be established "beyond question" or "beyond a reasonable doubt". *See Mayview Corp.* v.*Rodstein,*480 F.2d

714 (5th Cir. 1973); *Eli Lilly and Company, Inc.*, v. *Generex Drug Sales, Inc.*, 460 F.2d 096 (5th Cir. 1972); *Carter-Wallace, Inc.* v. *Davis-Edwards Pharmacal Corp.*, 443 F.2d 938 (1st Cir., 1942); a *Walker on Patents* § 686 (Deller 2nd Ed., 1973).[2]

Federal ;courts have recognized that validity and infringement can be established beyond question if there has been a prior adjudication of the patent in question or if there has been public acquiescence in the patent. Defendants have argued here that proof of either of these two elements is a prerequisite to injunctive relief in any patent case. It is therefore argued that because there has been no prior adjudication of the patent or prior acquiescence this motion must be denied.

The Court agrees that plaintiff cannot claim either of the two exceptions,[3] but the court is unable to accept the argument that proof of acquiescence of prior adjudication is a necessary precondition to the granting of preliminary relief. The federal courts appear to have reached contradictory conclusions on this subject, but in this Court's view the better rule of law is contained in the Fifth Circuit's decision in *Eli Lilly* v. *Generix Drug Sales*, supra, where the Court held that plaintiff's burden of establishing validity and infringement beyond question "is ameliorated where the patent at issue has been the subject of long acquiescence or has been adjudicated to be valid". *Id.* at 1099. Thus while acquiescence or prior adjudication are not prerequisites to a preliminary injunction absent proof of one of these elements, plaintiff has the difficult task of demonstrating the validity and infringement beyond question by other evidence. Since plaintiff has presented no evidence of prior adjudication or acquiescence, it is this high standard which controls the Court's consideration of the motion for preliminary injunction.

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[2] It has been suggested that the Sixth Circuit does not require such a high standard of proof. *See Dorr and Duft* "Patent Preliminary Injunction Relief" 60 J.Pat.Off.Soc. 597, 632 fn. 7 (hereinafter Dorr & Duff). The authors of that article reach that conclusion based on indications gleaned from the text of *City of Grand Rapids* v. *Warren Bros., Inc.*, 196 F. 892 (6th Cir. 1912), *Crescent Specialty Co.* v. *National Fireworks Dist. Co.*, 219 F. 130 (6th Cir. 1915) and *Blount* v. *Societye' Anonyme Du Filtre*, 53 F.l 98 (1892). This conclusion is open to question in light of the near unanimity in the other federal courts favoring the stricter standard in cases far more recent than these three Sixth Circuit cases. *See Dorr & Duft*, *supra* at 632. Furthermore, drawing a firm conclusion from these bases is difficult because of an apparent inconsistency between the three holdings. The two earliest cases, *Blount* and *City of Grand Rapids* may indeed be read as incorporating traditional preliminary injunction standards into patent litigation. The third case however casts some doubt on this reading. In *Crescent Specialty*, the Court stated that a preliminary injunction could be ordered where title was clear, plaintiff demonstrates a fair probability of public acquiescence therein", *id.* at 132. This seemingly mandatory proof of public acquiescence is surely not consistent with the Sixth Circuit's earlier rulings that traditional equitable principles would govern patent cases.

In their memoranda in opposition to the plaintiff's motion defendants have argued that plaintiff is unable to prove validity or infringement beyond a reasonable doubt for any number of reasons. Of principle to the Court is the claim that the patent at issue is invalid under 35 U.S.C. § 102(b) since it was "on sale" more than one year before the December 1, 1964 application filing date/ Section 102(b) of Title 35 provides that a person may be entitled to a patent unless:

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[3] Plaintiff has asserted that the officers of Daimler-Benz and Porsche made offers to settle this case shortly after suit was filed. Plaintiff contends that this demonstrates that these defendants impliedly acknowledged these patents to be valid. The settlement offers are of little or no value in proving that defendants conceded validity or infringement, for they merely reinforce the position defendants have taken throughout this litigation, i.e., for costs of defending this suit exceed any possible liability for infringement they may have.

"the invention was ... on sale in this country more than one year prior to the last date of application for patent in the United States."

Defendants have asserted that one year before his application, Dr. Kearns demonstrated a working model of his system to several employees and agents of the Ford Motor Company. Defendants have also submitted affidavits signed by Dr. Kearns and testimony given by Kearns in prior litigation which, in defendants' view, imply that these demonstrations were intended to solicitation for the sale of the invention.

Plaintiff on the other hand has suggested that the demonstration of the patent before the Ford employees was designed for personal information purposes only. It is claimed that the intermittent windshield wiper control system was not operational at this time, particularly in light of the fact that the system when housed in the automobile would have to withstand temperatures which might adversely affect the operation of the system which was demonstrated to the Ford engineers.

The Court has reviewed carefully the submissions of counsel on this issue and it must be concluded that defendants have raised a reasonable doubt as to the validity of the patents under 35 U.S.C. § 102(b). A logical inference which can be drawn from statements made by plaintiff himself in prior testimony and affidavits is that he was most interested in becoming the Ford supplier for such wiper systems and that that was his direct goal in conducting the demonstration. It further appears from Dr. Kearns' testimony that the system was at the time of the demonstration in a marketable state.

It is neither necessary or prudent for the Court to go into great depth into the relative merits of the parties' position in the question of § 102(b)'s application. The ultimate disposition of this question of § 102 (b)'s application. The ultimate disposition of this question of validity of the Kearns' patent must be left to a later time. But, in the present procedural context the Court is only concerned with whether plaintiff has established the validity of his patent beyond question. The Court must conclude that he has not.

Regardless of its conclusion on the merits of plaintiff's claim, the Court would be constrained to deny the instant motion because of plaintiff's failure to establish irreparable injury. As noted by the Supreme Court in *Sampson* v. *Murray*, 415 U.S. 61 (1974), "[t]he basis of injunctive relief in the federal ;courts has always been irreparable harm and inadequacy of legal remedies". *Id.* at 88.

Plaintiff has claimed several examples of irreparable harm which would result if a preliminary injunction is not issued. Plaintiff's primary argument is premised on his contention that, except for the defendants' infringement of his patents, plaintiff would be the major manufacturer and supplier of these systems. He has therefore argued that this status is being denied him while defendants continue infringing his patents. Plaintiff further claims that he may be forever denied a foot hold in his market as a supplier of these goods since the patent at issue here expires in four year.

The Court notes that plaintiff's inability to become a supplier of defendants' allegedly unlawful use of plaintiff's patent does not establish irreparable harm. Such claims for lost profits if proved with sufficient definition at trial, could be the basis for a damage award which would fully compensate plaintiff for the violations. *See Panduit Corp.* v. *Stahlin Bros. Fibre Works*, 575 F.2d 1152 (6th Cir. 1978); *H. K. Porter Co., Inc.* v. *Goodyear Tire & Rubber Comp.*, 536 F.2d 1115 (6th Cir. 1976).

It is true that if plaintiff's patent were to expire prior to a decision finding the patent valid and infringed, the plaintiff's anticipated position as a major supplier of the windshield wiper systems would be undermined. The short answer to this contention is that this action will be completed before the expiration date of plaintiff's patent. The Court would therefore be able to enjoin the infringement of this patent if plaintiff is successful on the merits and plaintiff would be allowed the marketing foothold which he fears would otherwise be lost.

Pursuant to the foregoing, the Court will deny plaintiff's Motion for a Preliminary Injunction.

IT IS SO ORDERED.

S/
PHILIP PRATT
United States District Judge

Dated: January 10, 1980
Detroit, Michigan

APPENDIX D

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

From a transcript of the proceeding in Kearns v. Chrysler Corp. and American Motors Corp. of Tuesday, March 10, 1992.

THE COURT: Starting p. 3, l. 2: And I want, for the last time, to tell you that I have a concern as a Judge that whatever the problems you face in obtaining counsel, and whatever your desires are in pursuing this case as an alternative to settling it, that the papers reflect a woeful under appreciation of the complexities of handling a case for yourself.

Notwithstanding your skills as an engineer, which are considerable, and your long involvement in the civil justice system, which is consider-able, and the extent to which you have obviously made an effort to educate yourself and the possibility that you may have assistance outside of the courtroom in doing these things, you are nonetheless at a considerable disadvantage because of the complexities of the path ahead.

It's not possible for me to predict what will occur, but with that statement we're going to proceed today.

DR. KEARNS: May I respond to that?

THE COURT: I don't know. It doesn't call for a response, but if you want to say something, you're certainly welcome to say it.

DR. KEARNS: Yes. ... .

Also, I submitted another paper here today and during the past week was the first time that I got delivery of the local rules, and I believe you will find that this paper is in accordance with the local rules and is better prepared.

I would also like to inform you that I went to 13 law firms in the last seven weeks and that I ran into conflicts most, I would say, 11 out of 13 times I ran into conflicts. And Andrew Aitken had attended a lawyer's conference and at that conference, why, he was told that General Motors, as an example, does business with 600 different law firms.

I am suing, as you know, as many as 25, if you multiply 25 by 100 or so, there's just thousands of law firms that are not available to me.

The other things that happened is that prior to my having financial difficulties with Reed, Smith, your Honor had stayed the other cases. The ... .

APPENDIX E

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

From the transcript of the proceedings of July, 23, 1992 in:

Kearns v. Daimler-Benz Aktiengesellschaft,
Dr. Ing. h.c.f. Porsche, A.G.
Civil No. 78-70642;

SWF-Specialfabrik fur Autozebehor Gustav Rau
G.m.b.H. v. *Kearns*
Civil No. 79-74451

Kearns v. *Audi NSU & Volkswagen Werke, et al.*,
Civil No. 82-70749;

Kearns v. *Ferrari S.p.A., et al.*
Civil No. 85-70459;

Kearns v. *General Motors Corp.*,
Civil No. 85-70461; [DTX-]

District Judge Cohn before Dr. Kearns v. 13 defense attorneys including:

George E. Badenoch, Esq. for *Ferrari, et al.*

Dennis Allegretti, Esq. & Charles W. Shifley, Esq.
Timothy Jaeger, Esq. for *General Motors Corp.*

Starting p. 16, line 3

THE COURT: Thus far, it seems to me that the only one who has really been thinking about the disposition of these cases is the Judge.

And I have a new problem. All these cases are more than five years old, and the Sixth Circuit has adopted a rule that you can't go out of the circuit as a visiting Judge if you have any case on your docket more than five years old. So these cases are likely to pin me to the Eastern District of Michigan. If I want to go to the Northern District of Illinois, or the Middle District of Florida as a visiting judge, I may not be able to do so because of these cases. You know, that's as incentive to get rid of them.

I'm not going to ask you to dismiss them, Dr. Kearns, and then refile them so the five years starts running all over again. I mean, I could do that, but we don't want to do that.

APPENDIX F

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

From the Transcript of the Proceedings in *Kearns* v. *General Motors Corp*. Civil No. 85-70461; of 13 August 1992 page 22:

JUDGE COHN: "If I had discretion to grant equitable relief in the form that Dr. Kearns prays for, in either the *Ford* case or the *Chrysler* case, based upon the fact the jury found infringement was not willful, I would never exercise that discretion in favor of an injunction. So that while I have here-to-fore taken the position that I had no power to grant equitable relief Dr. Kearns prays for, I think it should be made clear as we move forward in this case, had I the power[4], absent a finding of willfulness that was affirmed on appeal, I would never consider the exercise of it. That should not give you any comfort, Dr. Kearns, but I think it should allow you to think even further on that point.

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[4] An analogous situation to that of Dr. Kearns is represented by the decision in *Burr* v. *Ambarch*, 883 F.2d 1071, 1078, vacated, 492 U.S. 902 (1989), reaffirmed on remand, 888 F.2d 258 (2d Cir. 1989). As held in *J.I. Case Co*. v. *Borak*, 377 U.S. 426, 433 (1964), federal courts have a duty to be alert to provide such remedies as are necessary to make effective the congressional purpose of statutes enacted by Congress.

APPENDIX G

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

From the transcript of the Proceedings of August 18, 1992 before the U.S. District Court for the Eastern District of Michigan, Judge Cohn presiding, in *Kearns* v. *Chrysler Corp. and American Motors Corp.*, No. 82-CV-70748-DT

THE COURT: (Continuing, p. 2, l. 8). One, the Plaintiff has filed a Taxed Bill of Costs. There has been nothing filed in response.

So, so far as the Court knows, the costs of $105,009.42 are allowable.

(Continuing p. 4, l. 1) And the fifth is the Plaintiff's American Motors motion to which no response has been filed.

THE COURT: (Continuing p. 6, l. 4) [W]ith regard to "loose ends." What is it that is left, that you think under that rubric for the Court?

DR. KEARNS: Well, the first item was the motion for prejudgment interest. ... .

MS SIEMER: (Starting p. 7, l. 20.) And the answer with respect to *Renault* is, yes, those are included in the (*Kearns* v.) *American Motors* numbers. That's included in, I believe, both the July 2 and the later order. (American Motors Corp. damages were not included in the *Kearns* v. *Chrysler Corp. and American Motors Corp.* trial which Dr. Kearns "won.")

THE COURT: (Starting p. 8, l. 15) What else, Dr. Kearns?

DR. KEARNS: The matter of the order denying my Motion for Reconsideration of wording regarding the court order barring proofs as to American Motors Corporation.

THE COURT: Let me put it this way, Dr. Kearns. The only issue open on American Motors is that question of willfulness. Willfulness which is the subject of a separate motion by Defendant.

What else?

DR. KEARNS: It was Kearns' Motion to Affirm those patent claims that were made valid and enforceable against and infringed by all the Chrysler systems as representative claim pled against the representative systems.

THE COURT: I don't understand that, and I don't propose to find out. There was an adjudication of the claims at issue that is reflected in the partial final judgment, and that's the extend of whatever adjudication you get.

DR. KEARNS: Well, as I understand it, they're claiming that the only thing that was adjudicated was Chrysler A and B, and it wasn't representative of anything other than Chrysler A and B.

THE COURT: I don't know what you're talking about. You've got a partial; final judgment that says Chrysler's A and B circuits infringe and there's something like twelve million infringing units, and that's all you're entitle to. There's nothing else.

DR. KEARNS: Well, it's a matter of what claims are representative of the agreement.

THE COURT: I don't know what you're talking about. There's three claims that were held valid by the partial final judgment.

DR. KEARNS: Are they representative of more claims?

THE COURT: No, no, they don't need to for any fining in that respect. All your patents in issue have expired.

No, I don't know what you're talking about. I have to be candid, I don't know what you are talking about.

DR. KEARNS: Well, what the Master is doing at the moment is finding, for instance, when he passes half, and in the case of General Motors, it's 59 percent of the production is represented then by two circuits, Delco 2 and Delco 3. So in a similar vein, we had a trial with Chrysler. Now, how much of Chrysler's production was covered by other representative circuits?

DR. KEARNS: But there are four million more units, your Honor.

THE COURT: You've got an adjudication of something like twelve million infringing units, and that's the end of it.

THE COURT: No, there are not, sir. If you want to take an appeal, you take an appeal. There are not. This Court entered a partial final judgment finding that there were twelve million infringing units, period.

What else?

DR. KEARNS: There was Plaintiff's motion for an order to confirm that Defendant American Motors Corporation had no legal opinions as to infringement of Kearns' patents.

THE COURT: I don't make any such orders as that. Everything regarding American Motors is a matter of separate motion. I didn't try anything with regard to American Motors, nor did the jury.

What else?

DR. KEARNS: The next on the list was the order refusing to unseal the Porsche/Daimler-Benz/Bosch ("purloined-received" documents, see below), but I think you told me how to handle that in the transcript, so I'll look at that, your Honor.

THE COURT: What else?

DR. KEARNS: There was an order denying Plaintiff's motion to admit United Technologies.

THE COURT: United Technologies are not part of this case, and there are no rulings one way or the other on United Technologies.

....

THE COURT: Next, is the Kearns' Motion for Prejudgment Interest.

Do you have anything you want to add to your brief, Dr. Kearns?

DR. KEARNS: I thought that -- I had another case that I thought you might be interested in, your Honor.

I have highlighted Page 456, 436, and 437.

456,

> "... federal common law authorizes the award of such interest in appropriate cases to victims of violations of federal law."

And in the list of cases, why, they've included *General Motors* v. *Devex*. And at the bottom of that section, the court says,

> "The time has come, we think, to generalize, and to announce a rule that prejudgment interest should be presumptively available to victims of federal law violations. Without it, compensation of the plaintiff is incomplete and the defendant has an incentive to delay."

And on the last page of that case, your Honor,

> "We also reject the Gorenstein's argument that the judge should not have awarded compound prejudgment interest. Their dilatory tactics denied Quality Case the use of its money, including the opportunity to obtain interest on interest. The only case the

> Gorensteins cite for the proposition that it is improper under federal common law to compound prejudgment interest hold no such thing."

So then there is quite a list of citations. And at the end of that paragraph, it says,

> ". . . the district court's refusal" - - in this particular case that they were speaking of, *Dynamics Corporation of America* v. *United States* -- ". . . the district court's refusal to compound prejudgment interest was reversed as an abuse of discretion."

THE COURT: Thank you.

....

I had also highlighted different than the common citations of *General Motors* v. *Devex*, and you'll find those citations at the tab positions.

> On Page 653, for example, "When Congress wished to limit an element of recovery in a patent infringement action, it said so explicitly."
>
> On Page 654, "At the same time, Congress sought to ensure that the patent owner would, in fact, receive full compensation" --

....

THE COURT: Do you have anything you want to add?

DR. KEARNS: Sir, this was a letter of mine to the Editor in the Washington Post [Ext App xx] that was printed and the Commissioner of Patents on the left-hand column, Gerald Mossinghoff, and myself both reacted to the same article that they had written. My letter to the editor simply indicates, that is back before my patents even expired, but this reveals that I think I understood what was happening to me in the judicial process, and I thought you would find that of interest. I gave it to you.

Those are all the additional items that I have, your Honor.

MS. SIEMER: .... There have been an enormous number of frivolous motions, there have been things litigated over and over again. The time has been spent on this case, not just in our case, but also in the Ford case has, in part been the result of Dr. Kearns wish to have the judicial system perform certain adjudications for him. Those aren't available to him. I refer to equitable relief, ... we are entitled to have that considered when you decide what you are going to do about interest. ....

P. 21, l. 23 THE COURT: Well, I did opine last Friday from the bench that **I thought the reasons for the discharge of Arnold, White & Durkee were frivolous** for three reasons that ostensibly were given. .... (continuing p. 23, l. 7) Between the time the case was filed and it went to trial, there was a lot of delay, a lot of time. But I don't think anything in that period suggests a denial of prejudgment interest. .... l. 14

THE COURT: From the time the complaint was filed, this is the time interest should begin running.

MS SIEMER: March of 1982.

THE COURT: Yeah.

Until February '91, which is when the Court addressed the Chrysler case for the first time with any substance; isn't that right, February '91?

MS SIEMER: February '91, that's correct.

THE COURT: Okay.

Chrysler knew the clock was running. Chrysler in the

Court's judgment, knew the clock on prejudgment interest was running, likely was running, excuse me, likely was running. ... . l. 18 When the Court chose Ford as the first to go to trial, I want to remind you of something you may not know, that at the time the Court chose Ford, the stipulation was out there. The choice of Ford was almost a matter of whimsy, if you remember the record.

It was really motivated by the fact that Ford was untainted by the purloined documents. ... . And, as we now look back on this case, the matter of the purloined documents was a red herring.

MS SIEMER: But it did take a long time.

THE COURT: I know, but it was a red herring generated mostly by the Defendants, mostly. Not by Chrysler, no, no, not Chrysler. But Chrysler was content, as the Court sees this record, to be a spectator, a bystander.

MS. SIEMER: ... .

First of all, if Justice Stevens is correct in his concurring opinion that there is a public interest here to be considered when you decide what you're going to pay with respect to prejudgment interest, if that's right, if there's a public interest component in that that you are permitted to consider if you to decide to, there is no public interest in assessing Chrysler for a period of time over which it had no control and it had no burden to come forward.

THE COURT: Dr. Kearns, would you be good enough to sit down?

DR. KEARNS: Yes, sir. ... . l. 15

THE COURT: I don't think the public interest component has one -- I understand the public interest component. And what I am saying now is not defending this Court, but I am frank to tell you that I see nothing between the time the complaint was filed and February, 1991 that was in any way exceptional, out of the ordinary, or unusual. And, look, no one can appreciate more how the system has been abused than this Judge.

MS SIEMER: If that's the case --

THE COURT: Wait a minute.

But the abuse has not been of a form that suggests a denial of pre-trial interest for that period.

MS SIEMER: That I think is the problem. It isn't -- if you look at Justice Stevens concurring opinion, it isn't that the conduct occurred in the time that you're talking about, it is that the conduct occurred at all, your Honor. You are entitled to take conduct in 1991 and decide whether it is fair, given that conduct, to go back. And I'm suggesting that given the litigation against the Federal Courts, which took two years.

THE COURT: When was the litigation against the Federal Courts?

MS. SIEMER: The litigation about whether the patents had to be extended.

THE COURT: That didn't bother -- Ms. Siemer, you know, in fairness, in fairness, that didn't bother anyone. I discovered that litigation on my own. I discovered that litigation, that case, myself. No one called it to my attention. No one, as a matter of fact, I just discovered within the last two weeks that after he was defeated in the Federal Circuit he applied for a cert to the Supreme Court. I didn't know that until about two weeks ago.

MS. SIEMER: The way I read the record there was a hiatus.

THE COURT: No.

MS. SIEMER: Well, there was a hiatus of almost two years, and it was concurrent with that. And there was another hiatus that was concurrent with the discovery dispute.

Was there anything going on during this, I think not.

THE COURT: No, I must tell you, I must tell you, I've looked at that record in front of Judge Pratt. I've studied the docket entries. I have all his orders, okay.

MS. SIEMER: That's what I looked at.

THE COURT: Okay.

MS SIEMER: I looked at yours.

THE COURT: But I don't see anything, yeah, it was stuck in front of a Magistrate. Magistrate/Judge, they were off on a tangent, you know, and everyone was histrionic, as if this was the most grievous thing that ever had occurred. And when I got the case there was a big argument about the $135,000.00, who should pay it, and they spent months in front of the Magistrate.

Then I said, can he afford it.

Everyone said, what do you mean.

I said well, as I understand the law, you can't put a financial sanction on a party that will force him out of court if he can't pay it if he can't afford it.

When I finally got my bearings, I said, I'm going to put all that aside and I brought everyone in there and I said, what case can go to trial, what case can go to trial that does not involve the letters, you know, the purloined documents. And it was fortunate that there was a lawyer in the courtroom, and I say this, of the stature of Dennis Allegretti, because he stepped forward and said, Ford can, you know. Every other lawyer in the courtroom was trying to pull the wool over the Court's eyes because they had all been involved in this very elaborate charade as far as I'm concerned.

MS. SIEMER: But not us.

THE COURT: No, but you sat on the side lines along with Ford, quite content, quite content to let this litigation languish.

MS. SIEMER: What evidence is there in the record that we were content?

THE COURT: Because nobody did anything.

MS. SIEMER: But we couldn't do anything.

THE COURT: Yes, you could.

MS. SIEMER: No, we could not.

THE COURT: You could do just what you did. You cam in and tried to set the stipulation aside.

MS. SIEMER: You excoriated us for that.

THE COURT: I know I did.

MS. SIEMER: You said how unconscionable --

THE COURT: But that doesn't mean that somebody couldn't have tried --

MS. SIEMER: You said we should never have done that. You said that to me.

THE COURT: Excuse me.

Ms. Siemer, Ms. Siemer, in the Ferrari, the Mercedes Benz, that litigation, I've got everyone pounding me to enter an order on prejudgment interest. They're all now concerned.

I've told them no, there will be no rulings. But I've also said, you all ought to have some confidence in the fact that nobody is going to reward Dr. Kearns now for the circumstances he's placed himself in, for his inability to manage more than one case at a time. So I understand that concern. I understand that concern.

I assume you have other things you want to tell me, and I don't want to use up your time on this, you know, and then shorten it on the other motion, which I think has some merit.

MS. SIEMER: I understand that, your Honor. The reasons I wanted to argue this personally is because I know that you could have the view that we sat on our hands and did nothing. I think, in fairness, we had a stay that required us to do that. We had a stay that we could rely on, and we had a stay that the Plaintiff agreed to. And under the *Uniroyal* case and certainly the *Devex* case we were entitled to do that. And what I've asked is that you simply think about whether it's fair to double this judgment for something that we had nothing to do with.

THE COURT: I have thought about it long and hard, and I don't think there's anything unfair.

You had the use of the money. You had the use of the units. And all you're being asked to pay is for the advantage you gained by not being found to be an infringer until this time, and not having to pay the royalties for those years.

Now, I don't propose to compound it. I don't propose that it be accumulated monthly, as Dr. Kearns suggests. I believe there are periods of time within that framework that you're entitled to credit, more particularly, from March 2nd, 19 -- I'm sorry, July 8th, 1991 to October 8th, 1991, and January 21, 1992 to April 20, 1992. I think those are delays directly attributable to, solely attributable to Dr. Kearns, those periods.

I don't think there's any other period of delay, if you want to call it delay, that he should be penalized for in terms of the denial of prejudgment interest. I think Chrysler and Ford are to be treated precisely the same. I find nothing different in Chrysler's circumstances in this case than in the Ford circumstances in this case.

.... But I have searched this record as best I can to find something that makes it unfair to apply what I believe to be the conventional rules when one is found to be an infringer. And I don't find anything. I'm not talking about your other motion.

MS. SIEMER: I understand.

....

I. 14 THE COURT: No, I don't find anything qualitative. I find that the stay was mutually advantageous to both parties. One said, I will follow and be bound by the other. And when you get done with the other, if there's still something to be tried, I will then meet the challenge. But I'm quite content to follow along with Ford.

And I think Ford was quite content to follow along and stay on the side lines while the others beat each other up over what turned out to be, you know, it's all rather dramatic when someone steals some documents and they show up in a motion for summary judgment, and no one wants to pursue it. Then one files sanctions, you know, there's a line in McCormick I've used before, "When the side show becomes the circus." He uses it in a different fashion on some evidentiary question.

But satellite litigation, everyone was content to do it. And the Ford lawyers and the Chrysler lawyers stood there. No one came into court in front of Judge Pratt and said, look, prejudgment interest is running on this thing. We're accused of being infringers. We want our cases tried, **we had nothing to do with these documents, these admissions are not binding on us,** and this is all a lot of nonsense.

Now, nobody did that as near as I can tell. No one came to Judge Pratt and said, look, you can't handle this, now give us a different judge. Cut us out of this, and let's go someplace else with our trial. We want a case tried because we suffer the possibility of prejudgment interest.

MS. SIEMER: You could do that. That's why I asked you if you considered there to be a qualitative difference in just a stay, but a stay with a substantive position like, we will abide by the validity finding in Ford, because your Honor, because you can't consider that we had an obligation to come to you when we could not have gotten out of that stipulation.

THE COURT: You shouldn't have entered into it in the first place then.

MS. SIEMER: Well, that may be the case now, but when we entered into it, it was mutual, we couldn't get out of it.

THE COURT: And everyone know that you'd have to wait for the Chrysler trial. Everyone know you would have to wait for the Chrysler trial to get out of it, I mean, the Ford trial to go forward. And if Ford won, you were home free. You had no expense.

MS. SIEMER: That is not necessarily the case, but I've asked you to reconsider it. I understand the approach that you take and that is why I asked for oral argument.

I thank you.

THE COURT: I appreciate what you're saying. I suppose the best way to put it to you, so you'll fully understand it is, it won't ripe for me, this Judge, it won't ripe for this Judge. To me it would sound punitive, and he's not to be punished in that fashion for the way he's conducted himself. He just isn't.

That's one of the unfortunate things. He's entitled, as irritating as it is, it would be in my view it would be vindictive. I think I have a pretty good idea, let me add as a personal note, but this is personal. This is done on the basis of an informed discretion.

But what I would like to address now --

DR. KEARNS: Your Honor, may I speak on that subject?

THE COURT: On what subject?

DR. KEARNS: The one you're, perhaps, just about to leave, I thought.

THE COURT: No.

I am going to lose my patience with you, Dr. Kearns, I really am. I just told you you won your motion. Now, what do you want to do, irritate me so you lose it?

You persist in demonstrating your inadequacies as an advocate for yourself, sir.

Would you be good enough to sit down.

You have a motion for costs, expenses, and attorney fees, Defendant.

DR. KEARNS: Pardon me, your Honor.

I thought that I would go first and she would go second, and I would have an opportunity to rebut what she said to you.

THE COURT: No, I already rebutted it for you.

DR. KEARNS: I have some improvements, your Honor.

THE COURT: Well, you can submit them in writing.

DR. KEARNS; Thank you.

THE COURT: We have Chrysler's motion for costs, expenses, and attorney fees, and then a supplemental submission. The supplemental submission does not follow precisely the format of the motion, the categories.

Also, so you will know, Ms. Siemer, it was necessary for the Court to total the amounts in each category. I was not given sub-totals.

MS. SIEMER: I noticed that. That was my oversight, your Honor. I did give you totals.

THE COURT: You did give me an aggregate, but no subtotals.

MS. SIEMER: That was my oversight.

THE COURT: And one cannot understand categories without discrete amounts.

MS. SIEMER: I just did the same thing, I added them up.

THE COURT: Well, okay.

Now the response I've gotten -- do you have anything you want to add to this motion?

MS. SIEMER: I do not, your Honor. I have laid out as carefully as I could the justification. I'd be happy to respond to any questions you have.

THE COURT: Well, yes, I have one. I guess I have to ask it to you.

I simply don't understand your right to compensation for the disqualification motions, I want you to know that. I think the motion had to be made, and it had to be resolved under the circumstances. And I really don't understand, you know, it's awful expensive, apparently for you folks, and the Court ultimately did it on the cheap for you, I have to say that, in the face of all this.

MS. SIEMER: You've noticed that was a different law firm, you have noticed that.

THE COURT: I did. I did.

MS. SIEMER: Let me tell you what my rationale was for that, your Honor.

That matter had been discussed extensively between Mr. Cantor and Mr. Durkee. That had been worked out. There was no ground for disqualification because Mr. Cantor and Mr. Durkee had discussed it, they had worked it out.

[Note: Dr. Kearns adds: A law firm that originally represented Dr. Kearns with whom worked and had allowed to have, copy, and study, his personal journals and papers for long periods of time (years) and whose members filed his first number of Complaints -- was allowed, by the same District Court Judge Cohn who structured a sale of land he owned to Chrysler through Comerica Bank of Detroit to represent Chrysler against Dr. Kearns -- in the same patent infringement case that they had Dr. Kearns' personal papers - a station wagon full!]

There was no ground for disqualification because Mr. Cantor and Mr. Durkee ...

[whom Dr. Kearns also fired.]

("What are we going to do with 1/3 of a plant?" was asked, in denying Dr. Kearns trial representation on equitable relief!!) ... had discussed it, they had worked it out.

This came as the result of a personal conviction of Dr. Kearns, and that's not fair.

THE COURT: No, that isn't fair. And all that was necessary was for Mr. Cantor to say, look, I'll go to the State Bar and I'll get an opinion that tells me I can do it. And if he had done that, that would have ended the matter. And that's precisely what the Court did after being inundated, and I think that's a fair word, with a lot of hocus pocus in the sense, cases, cases, cases, you know. You understand what I am saying. There was a simple answer.

[Wow!! ...easy for a lawyer to switch sides!]

[Dr. Kearns wonders —— "Wonder what God thinks!"]

Parenthetically, I had a motion last week -- when was it, Judy?

THE CLERK OF THE COURT: Three weeks ago.

THE COURT: Three weeks ago, on this.
And I went to the State Bar and I got an opinion saying the law firm was disqualified [as should have happened in Kearns' case!] That was the end of it. That's the proper place for an adjudication of ethical conflicts of those circumstances.

So I have to tell you, you know, I just don't think it's right to -- I've said enough.

Beyond that, you ought to now respond, Dr. Kearns, because let me tell you that in your response you have not responded to the categories that Chrysler has laid out its amounts, and you have not taken any issue with the dollar sums in each category.

DR. KEARNS: I thought that was the paper that we were doing today, your Honor, and then I'd have a week to answer.

THE COURT: Oh, no. This motion was filed June 24, and then it was supplemented July 9, and you did file a response on August 12th. But you spent most of the time talking about your right to equitable relief.

What do you want to say in response to the motion?

DR. KEARNS: I am really not prepared to discuss it, your Honor.

THE COURT: I'm not prepared to give you any more time, so the motion is taken under consideration.

You know, Dr. Kearns, there are some rules we have to follow.

DR. KEARNS: Yes, sir.

THE COURT: They have been -- you can stand -- bent mightily in your favor. But there comes a point in time when that sort of indulgences must come to an end.

That motion was filed, it was discussed at a pre-trial conference, at a status conference, I believe, was it not?

MS. SIEMER: Yes, it was, your Honor.

THE COURT: Because I told you I wanted the dollar amount.

MS. SIEMER: You did, and you told me the format in which you wanted them.

THE COURT: And then they were submitted?

MS. SIEMER: That's correct.

THE COURT: So it's taken under advisement.

Is there anything else for the Court at this time?

MS. SIEMER: There is one small matter. your Honor, that is the retrieval of documents from Mr. Crandall and Dr. Goldscheider. [Dr. Kearns' experts.] They will not give back the Chrysler documents that they used. The confidential documents that are under the protective order, they have no more use for them.

THE COURT: Why won't then give them back?

MS. SIEMER: I don't know. If I could tell you that, I probably could get them back. I've written them, I've asked them, I've called them. They will not give them back.

THE COURT: You prepare an order to show cause, and I'll sign it, directed to them. I don't know any other way of doing it. I'm not going to get them on the telephone.

MS. SIEMER: That's fine. Thank you.

THE COURT: But you can write them what I said.

Yes, Dr. Kearns.

Wait.

Do you have anything else?

MS. SIEMER: I do not.

DR. KEARNS: Sir, they have these categorized and separated in a way that supports their testimony, and as I understand it from the newspapers and what's going on, is that there will be appeals and these documents are perfectly safe.

They've been in their care for all this time, so I see no reason that they should be taken away from them in the event that they have to go over all these papers and do this again. They've got them all set up.

THE COURT: I can't conceive of any reason that they will ever have to go over them again, unless I grant a new trial.

DR. KEARNS: Chrysler said they were going to appeal the case.

THE COURT: They don't have anything to do with the appeal. Those documents in their possession have nothing to do with the appeal. They just don't have anything to do with it.

DR. KEARNS: The topics.

THE COURT: What?

DR. KEARNS: Isn't it possible the topics that they're --

THE COURT: No.

DR. KEARNS: -- in charge of are going to, perhaps, be done again?

THE COURT: No, no.

DR. KEARNS: The case isn't over.

THE COURT: No.

DR. KEARNS: There isn't any judgment in this case.

THE COURT: That's not exactly true. There's a partial final judgment, only abiding these matters.

Dr. Kearns, I tell you, there is no reason for them to retain possession of the documents. Now, if you have any contact with them.

DR. KEARNS: I'm just repeating their discussions with me.

THE COURT: Well, tell them to call the Judge -- do you mind if they call me?

MS. SIEMER: No, I do not.

THE COURT: Tell them to call me. You can even write them to call me, and I'll explain it to them. It may save a lot of time and trouble. But I'm not going to do it on the record.

Do you understand?

MS. SIEMER: Yes.

THE COURT: You can send me a copy of the letter. But they have no right to the documents.

Under the protective order, were they to be returned?

MS. SIEMER: Yes, they were.

THE COURT: Well, then they ought to be returned.

Anything less, Dr. Kearns?

DR. KEARNS: Today, no, your Honor.

THE COURT: Do you want to tell me something in five minutes in your favor on prejudgment interest?

DR. KEARNS: Yes, sir.

There were two stipulations. And under the terms of the first stipulation Chrysler could have reactivated and been our of it right away. So there were two stipulations, your Honor, and I invite you to review the first one that what's been said here today is not true.

THE COURT: Do you have a copy of it there?

DR. KEARNS: I don't have it with me, but I certainly have copies of it.

THE COURT: What is he referring to, Ms. Siemer, in the first one?

MS. SIEMER: I don't know.

THE COURT: Well, let's see.

DR. KEARNS: It's important we find it.

THE COURT: Well, let's see.

DR. KEARNS: She makes the statement that she doesn't know, you know.

THE COURT: Wait a minute. Wait a minute. Let's see what he's referring to. Let's see what he's referring to.

Well, he says, I suppose.

> "Parties agree that Chrysler may move to be relieved of this stipulation on a showing to the Court that Chrysler has evidence effecting the validity of the patents-in-suit more relevant than that presented to the Court in the aforementioned cases."

MS. SIEMER: That is precisely my argument, your Honor, we could not have gotten out of that.

THE COURT: Well, that's what you're referring to, right?

DR. KEARNS: That's the one that's signed by Dale Small, I believe.

THE COURT: Yes.

What else, Dr. Kearns?

DR. KEARNS: Your Honor, I happen to be a father, and I happen to have a son. My son received documents. Those documents are not purloined. We've stated the difference in these two words before.

But for the Court's consideration --

THE COURT: Well, if you take offense at my use of the word "purloined," then I will withdraw it, but I've been using it for about three years and it's the first time I heard that you objected to the characterization.

DR. KEARNS: And also, your Honor --

THE COURT: I thought that was Judge Pratt's finding.

DR. KEARNS: He said that my son Dennis was my alter ego.

THE COURT: Okay.

DR. KEARNS: I had absolutely no knowledge of the documents. I had absolutely nothing to do with it. I don't see why -- I mean, after all, people wrote those documents, your Honor. I didn't write them. And they're in the process now, those documents are important because certain Defendants are lying to this Court and it comes out in those documents. I think that's very important.

I don't see why I should be chastised by whatever delays were caused by those documents. It hurt me more than it hurt Chrysler. I would like this Court to know that I never wanted to sue Chrysler. I went to great lengths, I hired people, I built models, I built cars, I took them to Chrysler to be a supplier. I was hurt.

I would also like to say to you, your Honor, that while they took no action to get out of it, this case was scheduled for trial in August when my patents were to have first (routinely) expire in November. And completely out of the blue, Judge Pratt cancelled the whole schedule and I don't, to this day, understand why. And that's exactly the reason that I tried to take some action to defend my position. And, yes, I did sue the United States because I sought defense in the patent system in order to have a business.

You're concerned about a little interest. But I'd like you to know that Chrysler walked away with a hundred million dollar business on which they make 80 million dollars every year for time extended as long as we're going to have intermittent wipe. I think it's wrong.

I think that what has happened to me in this entire court procedure is wrong. I'm glad I gave you the copy of my letter to the Editor [Ext App xx] because I want you to know I at least understood what was happening to me.

Thank you, your Honor.

THE COURT: Do you have anything else you want to say?

DR. KEARNS: No, your Honor.

THE COURT: Do you mind if I talk to Ms. Siemer and Mr. Taylor? If you do, I won't. I won't talk to them separately.

DR. KEARNS: No, sir, I trust you.

THE COURT: Thank you.

- - -

REPORTER'S CERTIFICATION

....

APPENDIX H

Received OCT 27 1992

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

ROBERT W. KEARNS,
Plaintiff,
v. Civil No. 82-70748
CHRYSLER CORPORATION,
Defendant,
_______________/

FINAL JUDGMENT

This case came on for trial beginning October 16, 1991 before the Court and a jury, the Honorable Avern Cohn, U.S. District Judge presiding.

On November 22, 1991 the issue of whether plaintiff, Robert Kearns (Kearns), proved by a preponderance of the evidence that defendant Chrysler Corporation (Chrysler) infringed the following patent claims: U.S. Patent No. 3,351,836, claim 16; U.S. Patent No. 3,564,374, claim 3; U.S. Patent No. 3,602,790, claim 14; and U.S. Patent No. 3,581,178, claim 7, was submitted to the jury. On December 10, 1991 the jury returned a unanimous verdict in favor of Kearns. On April 28, 1992 the Court granted Chrysler's motion to set aside the verdict and directed entry in favor of Chrysler on U.S. Patent No. 3,581,178, claim 7.

On April 27, 1992 the issue of whether Kearns proved by clear and convincing evidence that Chrysler willfully infringed and what damages Kearns proved by a preponderance of the evidence weas submitted to the same jury. On June 11, 1992 the jury returned a unanimous verdict that Kearns did not prove by clear and convincing evidence willful infreingement by Chrysler and that Kearns proved damages in the form of a reasonably royalty, for the total of 12,563,107 infringing units produced by Chrysler during the time period from May 1977 to August 1988, of 90 cents per unit. On June 11, 1992 a judgment was entered in favor of Kearns and against Chrysler in the amount of $11,306,696.30. Thereafter the Court determined the remaining unresolved matters.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED in substitution for the judgments entered June 11, 1992 and July 31, 1992.

1. Chrysler infringed the U.S. Patent No. 3,351,836, claim 16; U.S. Patent No. 3,564,374, claim 3; and U.S. Patent No. 3,602,790, claim 14 during the period May 1977 to August 1988.
2. The number of infringing units is 12,563,107.
3. The damages suffered by Kearns in the form of a reasonable royalty is 90 cents per unit.
4. Chrysler is indebted to Kearns in the amount of $11,306,696.30 for infringement.
5. Chrylser is indebted to Kearns in the amount of $8, 075,193.75 for costs taxed while Chrysler is entitled to a credit of $667,322.62 under the Order of August 27, 1992 making the total amount due Kearns under this final judgment $18,740,469.43.
6. All claims, prayers, requests, and motions for relief not specifically adjudged herein are denied and dismissed with prejudice.
7. Still pending is Chrysler's motion for a judgment as a matter of law or in the alternative for a new trial.

s/

AVERN COHN
UNITED STATES DISTRICT JUDGE

DATED: OCTOBER 26, 1992 AS OF JUNE 11, 1992
Detroit, Michigan TRUE COPY s/ J.Cassady

APPENDIX I

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

ROBERT W. KEARNS,

Plaintiff,

v. Civil No. 82-70748

CHRYSLER CORPORATION,

Defendant. TRUE COPY

__________________/ S/Judy Cassady

ORDER

On August 27, 1992 the Court entered an order awarding defendant $667,322.62 in attorney fees and expenses to be charged against the judgment in plaintiff's favor. The reasons are explained in the Order.* On March 10, 1993 plaintiff filed a motion styled "Plaintiffs Kearns' Motion for Relief From Cost, Expenses and Attorney Fees And In The Alternative, Offer Of Proofs." The motion is obviously for reconsideration. Local Rule 7.1(h) limits a motion for reconsideration to "not later than 10 days." The motion is out of time. The motion is DENIED.

SO ORDERED.

S/

AVERN COHN
UNITED STATES DISTRICT JUDGE

DATED: MAR 19 1993
Detroit, Michigan

*There is a mistake in the Order. On Page 2, line 12, the word "Plaintiff's" should be "Defendants'."

APPENDIX J

From the transcript of the proceedings on Monday, June 21, 1993 of:

Kearns v. *Ferrari, S.p.A.* and 29 other Defendants; and *Kearns* v. *General Motors Corp.*

before Detroit District Judge Cohn appearing:

Bob Kearns;
Dennis Allegretti for *General Motors*;
Latham & Watkins for *Nissan*;
Lyon & Lyon for *Honda*;
Roberts for *Fuji*;
Badenoch for *Ferrari*; and,
Special Master Barker,

Starting p. 44, line 5:

"DR. KEARNS: As an inventor representing other inventors, as well, you will recall that in (my) Ford and Chrysler cases I collected reasonable royalties through August of 1988. If we subtract 17 years from 1988, which means that my patents issued in 1971, I was in this Court in 1978. I hired attorneys in 1977, but was in this Court in 1978. So that the amount of time that I had under my 17 years was a little over six years, and I came to this Court and I filed a preliminary injunction, which was refused[5]. And the things that I stated then are just as, we found to be true by the jury in this Court.

So instead of 17 years, you see, your Honor, I have been, as an inventor ~~I~~ have received about six years and seven months. I would like the Court to understand my purpose in doing so was to provide employment for United States citizens. And the gentlemen over here that are representing the people that are stealing the high technology of the United States, represented by me. I find it difficult, and I find it not in the United States interest for me to be in this Court rather than being out there doing more research and providing more jobs.

---

[5] *See*, transcript of the proceedings before Judge Pratt on Dr. Kearns' Motion for a Preliminary Injunction, Int App xx.

So I think that this Court has responsibilities for the eleven, no more than that, maybe 14 years that this Court has had this litigation during which my patents have somehow supposed to have routinely expired. I haven't had any exclusive time against any of these Defendants, or any in the world. I haven't had one day under the Constitution. So I think the matter of my not having any pre-judgment interest should certainly be reviewed. That's not part of the rules. I mean, I was required to come to this Court, I've come to this Court, I have "won" in this Court. And I will continue to win because they came on my turf, your Honor, I didn't go and steal their stuff. They came on my turf.

Thank you, your Honor.

THE COURT: Well, I suppose it's not much satisfaction, but while you haven't provided full employment to America, you've certainly done very well by the patent bar, Dr. Kearns. Whether that gives you any solace or not, I don't know, but you've done very well by the patent bar.

DR. KEARNS: It really doesn't, your Honor, and that was my purpose in filing the papers[6] two weeks ago.

THE COURT: Well, let me put it this way, Dr. Kearns, it's not relevant to what you said, but you now have the ability to appeal the refusal of this Court to give you equitable relief. It's now for the first time postured in a way that you can ask the (Court of Appeals for the) Federal Circuit to say that you're entitled to equitable relief.

---

[6] MEMORANDUM IN SUPPORT OF PLAINTIFF KEARNS' MOTION TO YET ALLOW EVIDENCE TO GRANT DR. KEARNS EQUITABLE RELIEF TO BRING THEM INTO ACCORDANCE WITH THE USA'S POSITION UNDER THE GENERAL AGREEMENT ON TARIFFS AND TRADE IN THE URUGUAY ROUND

DR. KEARNS: Well, I think it's going — — that's the problem, your honor, I think it's going to be limited that I have a right to come back and have a hearing before you.

THE COURT: Well — —

DR. KEARNS" I don't know that they're going to make that judgment.

THE COURT: Well, I don't know either, but at least you've got it in a form now that's appealable. That's something that you have been searching for for a long time. So you've got it that way. So I suggest, sir, that you concentrate on what I said a moment ago and be prepared on — — what's the date, Judy? ... ." The Kearns-Chrysler evidence showing that engineer S.R. Ward 'used' by drawing on xxxxxx into a Chrysler windshield wiper system, Dr. Kearns' invention found at Fig. 2 of his '837 patent [EXT APP XX] is sufficient with the argument of this Petition to include the Ford Motor Company, Chrysler Corp. and American Motors Corp. into the relief of the Supreme Court.

APPENDIX K

S SAFECO INSURANCE COMPANY OF AMERICA
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SEATTLE, WASHINGTON 98185

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

BOND #5758926

ROBERT W. KEARNS, Plaintiff :
v. : Hon.: Avern Cohn
: Civil No. 82-70748
:
CHRYSLER CORP., Defendant :

SUPERSEDEAS BOND

Chrysler Corporation, as principal, and Chrysler Insurance Company, a Michigan Corporation, and SAFECO Insurance Company of America, a Washington Corporation, as sureties, acknowledge that we are jointly and severally obligated and bound to pay to Dr. Robert W. Kearns ("Kearns") the sum of $18,740,465.43 under the conditions set forth below, to be paid to Kearns or his assigns or successors.

On October 26, 1992, a judgment in the amount of $18,740,465.43 was entered in the above-entitled action against Chrysler Corporation ("Chrysler") and in favor of Kearns. Chrysler has filed a notice of Appeal of the judgment to the United States Court of Appeals for the Federal Circuit and provides this bond as security sufficient to allow a stay of enforcement of the judgment by Kearns during the pendency of Chrysler's appeal.

This bond is void, (1) if Chrysler successfully prosecutes this appeal resulting in a new trial or a judgment in favor of Chrysler, or (2) if Chrysler prosecutes this appeal and the appeal is discontinued, finally dismissed, or the judgment is affirmed or modified, and Chrysler satisfies the judgement as adjudged and directed by the United States Court of Appeals for the Federal Circuit. Otherwise this bond is to remain in full force and effect.

It is understood and agreed that the sureties shall be severally liable and limited to the following participation in the event of claim on this bond:

The first $7,071,000 of loss to Chrysler Insurance Company. Loss in excess of $7,071,000 to SAFECO Insurance Company of America.

DATED:
July 6, 1993

Chrysler Corporation
By: S/
TITLE: Assistant Secretary

DATED: 07/06/93 Chrysler Insurance Company

BY: s/

Attorney-in-Fact: M. B. TATE

THE INITIAL LIABILITY HEREUNDER IS LIMITED TO $7,071,000.00

DATED: SAFECO Insurance Company of America
7/2/93

s/

Alice Albano Attorney-in-Fact

THE LIABILITY HEREUNDER IS LIMITED TO $11,669,465.43

STATE OF MICHIGAN)
COUNTY OF WAYNE)

On this day of July, 1993, before me, Notary Public in aforesaid county, personally appeared s/Anthony G Micale of Chrysler Corporation, to me known to be the same person described in and who executed the foregoing instrument and acknowledged the same to be his/her free act and deed.

s/Darcy c. Sufnar
Notary Public, Oakland County, MI
Acting in Wayne County, MI

STATE OF MICHIGAN)
COUNTY OF OAKLAND)

On this 6TH day of July 1993, before me, Notary Public in aforesaid county, personally appeared M.B. TATE, Attorney-in-Fact of Chrysler Insurance Company, to me known to be the same person described in and who executed the foregoing instrument and acknowledged the same to be his/her free act and deed. s/Mary A. Wallace

NOTARY PUBLIC MARY A. WALLACE
MARY A. WALLACE

Notary Public, Oakland County, Mich.
My Commission Expires March 16, 1997

The foregoing bond is hereby approved as to sureties and amount. ____________________

The foregoing bond is hereby approved by the Court this 12 day of July, 1993 to stand as a supersedeas staying execution of the judgment until the final determination of the appeal in the above matter.

s/ Avern Cohn
U.S. District Court Judge

BY: s/Judy Cassady
Deputy Clerk

APPENDIX L

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

From the transcript of the proceedings in *Kearns* v. *Toyota, et al.*, a subset of *Kearns* v. *Ferrari S.p.A. et al.*, Civil No. 85-70459, on Wednesday, January 26, 1994:

APPEARANCES:	Kearns, *Pro Se* Badenoch, (Toyota), Roberts, (Fuji and Suburu), Lyon, (Honda), Hunter, (Nissan), Cantor, (Fuji and Honda)

Starting page 17, line 14:

MR. KEARNS: (continuing) I would like the Court to know that in the documents that the (Toyota) Defendants selected, are four engineering drawings. Now these four engineering drawings were put in my care by Ford as part of the *Ford* case. And I find it very uncomfortable, the position that I'm in, and I don't think it's right for me to be the conduct of Ford engineering drawings to a competitor of Ford.

If these people want Ford drawings, I believe they should go to Ford and ask them themselves. Bob (Dr.) Kearns was given those documents with -- (under a protective order).

THE COURT: You have two minutes,sir.

MR. KEARNS: Yes, sir.

Continuing page 21, line 19:

THE COURT (continuing): As paraphrased in the Court's memorandum in the General Motors case, given Plaintiff's to act reasonably with regard to discovery matters, the confusion exhibited in his papers and in his oral presentations to the Court, his inability to focus, his inability to understand the rules of law, his failure to follow the Court's orders, his failure to comply with discovery, in the Court's view this case will never get to trial. And if it did, Plaintiff would be unable to present a case. This case is dismissed with prejudice.

Mr. Badenoch, you will prepare the appropriate order.

MR. BADENOCH: Thank you, your Honor.

THE COURT: That also includes the cases against the Defendants whose matters have been stayed.

MR. KEARNS: By what authority is that last order, your Honor?

THE COURT: By the authority of the Court. The authority vested in me as a United States District Judge for the Eastern District of Michigan in a case regularly assigned to my docket.

I don't say this facetiously, Dr. Kearns, but you certainly know where to go if you disagree with what I've done.

And I presume that Mr. Badenoch and his colleagues would not let the Court enter an order that they did not think they could defend. Because if they had, then they have exposed an unnecessary expense on their clients, not the Court.

Thank you.

I'll see you in chambers, Mr. Barker.

MR. KEARNS: May I attend, your Honor?

THE COURT: No.

APPENDIX L2d

UNITED STATES OF AMERICA
IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

ROBERT W. KEARNS,
Plaintiff,
v. Cohn Civil No. 82-70748
CHRYSLER CORPORATION and
AMERICAN MOTORS CORPORATION.
Defendants.

ROBERT W. KEARNS,
Plaintiff,
v. Cohn Civil No. 85-70461
GENERAL MOTORS CORPORATION,
Defendant.

ROBERT W. KEARNS,
Plaintiff,
v. Cohn Civil No. 78-70642
WOODS MOTORS, INC., DAIMLER-
BENZ AKTIENGESELLSCHAFT, and
DR. ING. h.c.f. PORSCHE A.G.,
Defendants.

SWF-SPECIALFABRIK fur
AUTOZEBEHOR GUSTAV RAU G.m.b.H.,
a corporation of the Federal
Republic of Germany
Plaintiff,
v. Cohn Civil No. 79-74451
ROBERT W. KEARNS,
Defendant.

ROBERT W. KEARNS,
Plaintiff,
v. Cohn Civil No. 82-70749
FRED LAVERY PORSCHE, WOOD
MOTORS, INC., VOLKSWAGEN
WERKE A.G. WOLFSBURG, and
AUDI NSU AUTO UNION, A.G.
Defendants.

ROBERT W. KEARNS,
Plaintiff,
v. Cohn Civil No. 85-70459
FERRARI S.p.A.,
AB-VOLVO,
ALFA ROMEO S.p.A.,
AUTOMOBILES-CITROEN, S.A.
BAYERISCHE MOTOREN WERKS, A.G.,
B-L, PLC (British Leland)
FUJI HEAVY INDUSTRIES, LTD.
GROUP LOTUS CARS CO.
HONDA MOTOR CO.
ISUZU MOTOR CO., LTD.
MITSUBISHI MOTORS CORP.
NISSAN MOTOR CO., LTD.
OFFICIENE ALFIERE MASERATI,
PEUGEOT, S.A.
REGIE NATIONALE RENAULT
ROLLS ROYCE MOTORS, LTD.
SAAB-SCANIA AB,
TOYO KOGYO CO., LTD (Mazda)
TOYOTA MOTOR CO., LTD

Dealers in the Detroit area:

BARNETT PONTIAC-DATSUN, INC.
BAVARIAN MOTOR VILLAGE, LTD
DALGLIESH CADILLAC-PEUGEOT
JOE DWYER SUBARU VOLVO, INC.
FALVEY OF TROY
GROSSE POINTE AMC-JEEP RENAULT
LA FONTAINE TOYOTA
SEAWAY MOTORS, INC.
SPORTS CAR EXCHANGE, INC.
TAMAROFF BUICK-DMC-HONDA-ROLLS
ROYCE, and
WOOD MOTORS, INC.
Defendants.

ROBERT W. KEARNS,
Plaintiff,
v. Cohn Civil No. 92-71408DT
UNITED TECHNOLOGIES CORP., and
UNITED TECHNOLOGIES AUTOMOTIVE, INC.
Defendants.

PARTY KEARNS' MOTION FOR JUDGE COHN TO DISQUALIFY HIMSELF UNDER TITLE 28 §144 & §455

Party Robert W. Kearns, (hereinafter,"Dr. Kearns") moves this court to receive and review the accompanying affidavit submitted in good faith under Title 28 § 144 & § 455 for truthfulness; and, to confirm that if any of the sets of alleged facts supporting a type of bias and prejudice set forth therein are true, the charge of bias and prejudice against Dr. Kearns or in favor of other parties by Judge Cohn is established under Title 28 § 144 & § 455.

It is to be noted that Judge Cohn is not responsible for the Sixth Circuit policy of item 10 in Dr. Kearns' view, but the purpose here is not to establish responsibility but simply bias and prejudice against Dr. Kearns or in favor of other parties, for whatever reason, by Judge Cohn.

Respectfully submitted,

Robert W. Kearns, *Pro Se*
301 Houghton Laboratory Lane
Queenstown, Maryland 21658
410) 827-9337 (Tel/Fax)

APPENDIX M

UNITED STATES OF AMERICA
IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

ROBERT W. KEARNS,
Plaintiff,
v. Cohn Civil No. 82-70748
CHRYSLER CORPORATION and
AMERICAN MOTORS CORPORATION.
Defendants.

ROBERT W. KEARNS,
Plaintiff,
v. Cohn Civil No. 85-70461
GENERAL MOTORS CORPORATION,
Defendant.

ROBERT W. KEARNS,
Plaintiff,
v. Cohn Civil No. 78-70642
WOODS MOTORS, INC., DAIMLER-
BENZ AKTIENGESELLSCHAFT, and
DR. ING. h.c.f. PORSCHE A.G.,
Defendants.

SWF-SPECIALFABRIK fur
AUTOZEBEHOR GUSTAV RAU G.m.b.H.,
a corporation of the Federal
Republic of Germany
Plaintiff,
v. Cohn Civil No. 79-74451
ROBERT W. KEARNS,
Defendant.

ROBERT W. KEARNS,
Plaintiff,
v. Cohn Civil No. 82-70749
FRED LAVERY PORSCHE, WOOD
MOTORS, INC., VOLKSWAGEN
WERKE A.G. WOLFSBURG, and
AUDI NSU AUTO UNION, A.G.
Defendants.

ROBERT W. KEARNS,
Plaintiff,
v. Cohn Civil No. 85-70459
FERRARI S.p.A.,
AB-VOLVO,
ALFA ROMEO S.p.A.,
AUTOMOBILES-CITROEN, S.A.
BAYERISCHE MOTOREN WERKS, A.G.,
B-L, PLC (British Leland)
FUJI HEAVY INDUSTRIES, LTD.
GROUP LOTUS CARS CO.
HONDA MOTOR CO.
ISUZU MOTOR CO., LTD.
MITSUBISHI MOTORS CORP.
NISSAN MOTOR CO., LTD.
OFFICIENE ALFIERE MASERATI,
PEUGEOT, S.A.
REGIE NATIONALE RENAULT
ROLLS ROYCE MOTORS, LTD.
SAAB-SCANIA AB,
TOYO KOGYO CO., LTD (Mazda)
TOYOTA MOTOR CO., LTD

Dealers in the Detroit area:

BARNETT PONTIAC-DATSUN, INC.
BAVARIAN MOTOR VILLAGE, LTD
DALGLIESH CADILLAC-PEUGEOT
JOE DWYER SUBARU VOLVO, INC.
FALVEY OF TROY
GROSSE POINTE AMC-JEEP RENAULT
LA FONTAINE TOYOTA
SEAWAY MOTORS, INC.
SPORTS CAR EXCHANGE, INC.
TAMAROFF BUICK-DMC-HONDA-ROLLS
ROYCE, and
WOOD MOTORS, INC.
Defendants.

ROBERT W. KEARNS,
Plaintiff,
v. Cohn Civil No. 92-71408DT
UNITED TECHNOLOGIES CORP., and
UNITED TECHNOLOGIES AUTOMOTIVE, INC.
Defendants.

AFFIDAVIT OF ROBERT W. KEARNS IN SUPPORT OF DISQUALIFICATION OF JUDGE COHN UNDER TITLE 28 §§ 144 & 455.

Robert W. Kearns, first being duly sworn, deposes and says:

1. There are no trials currently scheduled in the above styled cases.

2. Party Robert W. Kearns, (hereinafter, "Dr. Kearns") is restrained under an ORDER of 26 October 1992 of this Court which states in relevant part at paragraph B.2.:

> "[H]e may not employ or retain counsel, or seek the aid or assistance of counsel to perform any function with respect to this case, without such counsel for-

> mally entering an appearance, at which time Kearns' right to proceed *pro se* shall terminate."

and he learned for the first time himself of 28 U.S. Code § 144 & § 455 in the law library of the University of Maryland on 22 March 1994.

I.

3. District Judge Avern L. Cohn is co-partner "W. S. Properties" [Ext App A].

4. Avern L. Cohn as "W.S. Properties" structured a sale of property he owned to Chrysler Corporation a defendant in these cases through Comerica Bank.

5. Avern L. Cohn as "W.S. Properties" structured a sale of property he owned to ITT Corporation who wholly owns SWF-SPECIALFABRIK fur AUTOZEBEHOR GUSTAV RAU G.m.b.H., a corporation of the Federal Republic of Germany, who is a plaintiff in an above case against Dr. Kearns and who supplied products allegedly infringing Dr. Kearns' U.S. patents to DAIMLER-BENZ AKTIENGESELLSCHAFT, DR. ING. h.c.f. PORSCHE A.G., and REGIE NATIONALE RENAULT at least, who in turn, are defendants in the above styled cases.

6. Dr. Kearns did not know of these relationships between Chrysler Corporation and Avern L. Cohn, and, ITT\SWF Corporation and Avern L. Cohn until very recently.

7. "W. S. Properties" has continuing income.

8. District Judge Cohn maintains continuing property sales interests.

9. The Parties in the above styled cases are "candidates" for said property sales.

II.

10. Moreover, Judge Cohn has stated on the record:

"THE COURT: Thus, far it seems to me that the only one who has really been thinking about the disposition of these cases is the Judge.

And I have a new problem. All these cases are more than five years old, and the Sixth Circuit had adopted a rule that you can't go out of the circuit as a visiting judge if you have any case on your docket more than five years old. So these cases are likely to pin me to the Eastern District of Michigan. If I want to go to the Northern District of Illinois, or the Middle District of Florida as a visiting judge, I may not be able to do so because of these cases. **You know, that's an incentive to get rid of them.**

I'm not going to ask you to dismiss, Dr. Kearns, and then refile them so the five years starts all over again.[7] I mean, I could do that, but we don't want to do that."

III.

11. Judge Cohn dismissed the *Kearns* v. *General Motors* case during a telephone conference on 21 July, 1993 issuing the words of the ORDER on the telephone.

12. He subsequently, found the need to issue two Memoranda in support of said ORDER trying to explain his action.

IV.

13. A copy of a first letter [Ext App Ba], second letter [Ext App Bb] through fifth [Exhibit Be] and a copy of a Memorandum [Ext App C] - from Congressman Knoellenberg's aid, Eric Feiler to Paul Drolet, Chief Counsel of the House Subcommittee on Administrative Law and Government Relations **dated the same day** as Judge Cohn's dismissal of

---

[7] Dr. Kearns can only file patent cases during their 'routine life' thus following Judge Cohn's lead would result in his losing all his rights.

Kearns v. *General Motors* gives the view of the *General Motors* dismissal from third-parties. Dr. Kearns is not the Mr. Kearns discussed therein.

14. Dr. Kearns did not learn of the matter discussed in the Memorandum document Ext App C for a long time after the dismissal.

15. Dr. Kearns did not see the first letter through fifth letters [Ext App Ba through Be] until today.

16. The events described in said exhibits are pertinent to Judge Cohn's extra-judicial activities.

17. The events described in said document are pertinent to the dismissal of *Kearns* v. *General Motors*.

V.

18. Nor does Judge Cohn accept Title 28 § 1654[8] as the law in his court for Dr. Kearns.

"THE COURT: No, I'm not.

But I will tell you this. **If Dr. Kearns does not get lawyers, his cases are going to be dismissed.** He brought them, it's his obligation to prosecute them, and its his obligation to find counsel. Now that's just what he has to do, and I don't intend to impose on Mr. Aitken, but no one waits around more than 15 years for someone to get a lawyer.[9]" [Ext App D] and at a later date:

---

[8] **§ 1654. Appearance personally or by counsel**

In all courts of the United States the parties may plead and conduct their own cases personally or by counsel as, by the rules of such courts, respectively, are permitted to manage and conduct causes therein.

(As amended May 24, 1949, c. 139, § 91, 63 Stat. 103.)

[9] From that statement, Dr. Kearns understands the Detroit District Court has been "wait[ing] around" since Dr. Kearns filed his first patent cause litigation against *Porsche & Daimler-Benz Aktiengesellschaft* the customers of Judge Cohn's customers', ITT/SWF. ITT/SWF bought

"THE COURT (continuing): But as we come to the final pretrial, we have -- I'm also satisfied that Dr. Kearns cannot, whatever his ability, move forward on the GM case and get it in line for trial in November and move forward on the Ferrari case and get it in line for December. That would be a Herculean task for even a well-equipped law officer. Aside from the fact that he may or may not choose to take an appeal to Chrysler, and if he doesn't, Chrysler is likely to, and he's going to have to mount a defense against them.

My understanding is that the Ferrari case has been pushed, Mr. Badenoch, because of a concern over pre-judgment interest. So it is possible that one of -- there are several solutions to the problem that the Court sees.

One would be, the most drastic would be, to dismiss these cases unless he obtains counsel, on the grounds that he cannot, he cannot, he cannot prosecute." [Ext App E]

VI.

19. During the *Kearns* v. *Ford Motor* trial, Dr. Kearns walked away from the trial and continued to be absent from the court proceedings.

20. Judge Cohn requested that additional marshals be stationed in his court and in the hallways approaching his court.

21. The affidavit of Ext App F is pertinent to the charge.

22. Dr. Kearns suggests that each set of facts 3 - 5 & 7 - 9; 10; 11 - 13 & 16 - 17; 18; 19 - 21; confirm bias and prejudice against Dr. Kearns in his state, and/or in favor of other parties.

80% of General Motors Corp's. Delco Division in 1993! (Ext App xx)

22. Dr. Kearns suggests that facts 1, 2; 6; 14 & 15; confirm timeliness for a lone *pro se* inventor-manufacturer trying to protect his property.

FURTHER SAYEST THE DEPONENT NOT.

s/

Robert W. Kearns, *Pro Se*
301 Houghton Laboratory Lane
Queenstown, Mary land 21658
(410) 827-9337 (Tel/Fax)

State of Maryland)
) SS
County of Queen Anne's) s/
Notary

Subscribed and sworn before me this 24th day of March 1994
My commission expires date .

CERTIFICATE OF SERVICE

THIS IS TO CERTIFY that a copy of PARTY KEARNS' MOTION FOR JUDGE COHN TO DISQUALIFYING HIMSELF UNDER TITLE 28 §144, and, AFFIDAVIT OF ROBERT W. KEARNS IN SUPPORT OF DISQUALIFICATION OF JUDGE COHN UNDER TITLE 28 § 144 & § 455 was mailed first class, postage pre-paid, to:

Clerk (2) by Federal Express on 24 March '94

George E. Badenoch D. Dennis Allegretti Master Barker

Robert N. Bassel by facsimile on 25 March '94 after Judge Cohn's Court received a copy by Federal Express.

s/

Robert W. Kearns

APPENDIX N

301 Houghton Laboratory Lane
Queenstown, Maryland 21658

7 June 1996

U.S. Court of Appeals for the Federal Circuit ("CAFC")
Attn: Francis X. Gindhart, Clerk
The National Courts Building
717 Madison Place, N.W.
Washington, D.C. 20439

Re: CAFC Appeal No. 96-1314
Kearns v. *Wood Motors, Inc. et al.*
Constitutional issue

Appellant Kearns moves this Court to welcome this appeal before a panel chosen from those CAFC Circuit Judges who have heretofore not judged the patent infringement appeals of manufacturing-inventor Dr. Kearns as allowed under Fed. Cir. R. 47.2(b).

Pertinent background,
pertinent questions.

As a professional engineer (mechanical, 1957; electrical, 1958) and formerly, for ten years, an Associate Professor of Engineering in the College of Engineering at Wayne State University, located in Detroit, Michigan, Dr. Kearns has been asked by: a President of a University; Deans of Colleges of Engineering; and other Professors in Colleges of Engineers, *e.g.*:

> "Is it proper for us: to teach our students of science and engineering the curricula and facets of design; to encourage them to be innovative; to encourage some, after patenting their inventions, to start new businesses; when we see through your experiences others are

> allowed to steal your work; ... and, so few finish trial[10] to be able to manufacture and exclusively market their inventions and provide security to their employees' jobs through patents?"

In 1957, Kearns founded Kearns *Engineers* in Detroit, Michigan. During 1958-1961, Kearns as a partner in Kearns & Law *Engineers* expanded the business at a facility in Plymouth, Michigan Exhibit 1 and, later, again expanded the business back into Detroit, Michigan.

In 1964, after being awarded his doctorate, Kearns re-established Kearns *Engineers* to patent, manufacture and sell his products under *Computer Central*® so his employees' jobs would have the added "secure"—ity of Const. Art. I § 8 cl 8. Kearns sold his line of *Computer Central*® products through sales representatives throughout the United States, and, through licenses from the U.S. Department of Commerce in France and Japan Exhibit 2 into 1976.

A partial list of customers for these products includes: [*See, Kearns* v. *Wood Motors, Inc.* Response to Int. No. 6]

---

[10] The Commissioner of Patents is informed, by law, of each patent infringement civil action which he summarizes in the Appendix of his annual report. Over a three year period where the average number of U.S. patents issued was over 100,000, but 1,019 filed a Complaint for infringement. Of those 1,019, but 89 started a first day of civil action. District Judge Cohn has reported in the Michigan Bar Journal 977, December, 1982, *Effective Trial Practice: One Judge's View* by Hon. Avern L. Cohn:

> "Nineteen out of twenty cases on the civil side of the docket are settled prior to trial. If nineteen out of twenty cases did not settle, I could never handle the load."

By Judge Cohn's criteria, those 89 who started a first day of civil action—but five (5) would complete a patent infringement trial annually to qualify to receive their Constitutional standard of compensation: their "exclusive rights" for "limited times" out of over 100,000 patents issued annually.

Beckman Instruments, Inc.
Case-Western Reserve University
Cross Company - Entrekin Computers Division
Massachusetts Institute of Technology - Lincoln Labs.
3M Company
National Bureau of Standards
National Cash Register Company
United Technology - Hamilton Standard Division
Chitose Corporation, Japan

In 1977, Kearns hired Harness, Dickey & Pierce of Detroit, Michigan to provide to him a written opinion of infringement and to file Kearns' first (& other) patent infringement Complaint(s). That first Complaint was against defendants, *Wood Motors, Inc., et al.* Civil No. 78-70642. Before the *Kearns* v. *Chrysler and American Motors* trial, the Detroit District Court allowed Harness, Dickey & Pierce to represent Chrysler Corp. against Kearns before and throughout the trial and post-trial appeals.

In the ensuing 18 years of litigation in the U.S. District Court of Detroit, *Wood Motors Inc., et al.* never came to trial.

> Question 1: Has Dr. Kearns' lost his "exclusive right to ... (his) discoveries" for "limited times" under the Constitution awaiting trial?

Moreover, a single civil action 78-70642, *Wood Motors, Inc. et al.* was dismissed. Exhibit 3

> Question 2: Should not there have been a single CAFC appeal[11] of that single civil action dismissed?

Clerk Gindhart stayed the appeals. Exhibit 4

Pro Se Kearns' motion to serialize his work load was not answered by the CAFC but his application to the Supreme Court to serialize his concurrent *Petition for Certiorari* work load was granted.

---

[11] The single civil action dismissal, 78-70642, led to five Kearns CAFC appeals: 94-1305, -1306, -1307, -1308, and, -1310.

> Question 3: "Was *Pro Se* Kearns effectively punished by the CAFC for having successful inventions on every automobile assembler's products in the western world?"
>
> Questions 4 & 5: "Is Kearns to be held responsible by the Judiciary for their increased work load?"— "Or is that work load due to the stealing of Kearns' discoveries under moral lapses of others?"

The docket sheets Exhibit 5 suggest the answer. Paragraph 5 of the ORDER ON PAYMENT OF SANCTIONS, under appeal, suggests an answer, too:

> "This case has now concluded as Dr. Kearns has exhausted all rights of appeal ... ."
>
> The District Court stated: Exhibit 6
>
> "Well, let me put it this way, Dr. Kearns, ... you now have the ability to appeal the refusal of this Court to give you equitable relief. It's now for the first time postured in a way that you can ask the Federal Circuit to say that you are entitled to equitable relief."

When the remedy for patent infringement, under 35 U.S.C. §281 is to the patentee[12], question 6:

> "How are the loss to the USA public of jobs and trade gained by Germans, Japanese, French, Italians,

---

[12] **§ 281. Remedy for infringement of patent**

A patentee shall have remedy by civil action for infringement of his patent. July 19, 1952, c. 950, § 1, 66 Stat. 812.

> English, Swedish[13] to be remedied if equitable relief under 35 U.S.C. § 283 is denied to the inventor?"

as the public does not share in § 284 Damages?

Years ago, the Supreme Court extolled that the public interest in the patent law is dominant. *Mercoid Corp.* v. *Mid-Continent Co.*, 320 U.S. 661, 665[14].

Moreover notice, Exhibit 7, there is no phrase "from the date of this grant" following the words seventeen years in 35 U.S.C. §154. Congress simply legislated a seventeen year quantity of time without stating when it necessarily begins. The use of an invention in experiments constitutes infringement when:

> "the experiments are conducted with a view to the adaptation of the invention to the experimenter's business, the acts of making or of use are violations of the rights of the inventor and infringements of his patent."

---

[13] Woods Motors, Inc., Daimler-Benz Aktiengesellschaft, Dr. Ing. h.c.f. Porsche a.G., Fred Lavery Porsche, Volkswagen Werke A.G. Wolfsburg, Audi NSU Auto Union, A.G., Ferrari S.p.A., AB-Volvo, Alfa Romeo S.p.A., Automobiles-Citroen, S.A., Bayerische Motoren Werks, A.G., B-L, PLC (British Leland), Fuji Heavy Industries, Ltd., Group Lotus Cars Co.. Honda Motor Co., Isuzu Motor Co., Ltd. Mitsubishi Motors Corp., Nissan Motor Co., Ltd., Officiene Alfiere Maserati, Peugeot, S.A., Regie Nationale Renault, Rolls Royce Motors, Ltd., Saab-Scania AB, Toyo Kogyo Co., Ltd. (Mazda), Toyota Motor Co., Ltd., SWF-Specialfabrik fur Autozebehor Gustav Rau G.m.b.H..

[14] *Pennock* v. *Dialogue*, 2 Pet. 1; *Kendall* v. *Winsor*, 21 How. 322, 329; *Adams* v. *Burke*, 17 Wall. 453; *Motion-Picture Co.* v. *Universal Film Co.* 243 U.S. pp. 510-511; *Morton Salt Co.* v. *G.S. Suppiger Co.*, 314 U.S. 488, 493; *United States* v. *Masonite Corp.*, 316 U.S. 265, 278 ... The patent is a privilege. But it is a privilege which is conditioned by a public purpose ..."

W. Robinson, *The Law of Patents for Useful Inventions § 898* (1890) as cited with approval in *Roche Products* v. *Bolar Pharmaceutical Co.*, CAFC 1984, 733 F.2d 858, 863.

In the pre-trial order of *Kearns* v. *Ford Motor Co.*, Ford admitted that all 20,500,000 intermittent windshield wiper systems "IWWS" Ford built infringed Kearns' U.S. patents if the Kearns patents were valid. The Ford jury found six out of six of Kearns' U.S. patents to be valid. Ford introduced said infringing IWWS on their 1969 models which were in dealers showrooms in August '68. Kearns' '836 IWWS U.S. patent was issued 7 November 1967. Kearns seeking to be a supplier and to receive a contract worked *gratis* with Ford engineers of the Advanced Electrical Design group in '64 - '65 until one day he was told,

> "We have designed an all Ford IWWS —
> don't come back."

Kearns began working with Chrysler engineers on 9 December 1964 seeking to be a supplier. Exhibit 8 He submitted 20 pre-production samples with his quotation that had passed Chrysler specification PF-6338 tests. Exhibit 9 In the *Kearns* v. *Chrysler* trial the jury found that Chrysler infringed four out of four of the six patents found valid in Ford.

Wood Motors, Inc., et al. depositions held in Stuttgart, Germany revealed that on March 28, 1968 SWF bought from the Department of Commerce a copy of all Kearns' U.S. patents to that date and freely circulated them to their engineers and shortly thereafter began selling Kearns' IWWS discoveries to Mercedes and Porsche. In *Kearns* v. *Wood Motors, Inc., et al.* the District Court denied a preliminary injunction to Kearns stating:

> "It is true that if plaintiff's patent were to expire prior to a decision finding the patent valid and infringed,

the plaintiff's anticipated position as a major supplier of the windshield wiper systems would be undermined. The short answer to this contention is that this action will be completed before the expiration date of plaintiff's patent. The court would therefore be able to enjoin the infrin-gement of this patent if plaintiff is successful on the merits and plaintiff would be allowed the marketing foothold which he fears would otherwise be lost.

Pursuant to the foregoing, the Court will deny plaintiff's Motion for a Preliminary Injunction."

dated 10 January 1980 s/ District Judge Pratt

Judge Pratt did not keep that promise to Kearns.

Kearns has been in continuous 35 U.S.C. § 281 'remedy' civil actions in the Detroit District Court since March 1978 with adjudged infringers using Kearns' U.S. patents' discoveries under the Judicial denial of Kearns' preliminary injunction and their 'using' Kearns' discoveries as infringements under *Roche, supra* from before Kearns' IWWS U.S. patents first issued.

Question 7: "Has Kearns received his Const. Art. I § 8 cl 8 standard of compensation of the "exclusive right to ... (his) discoveries" for "limited times?"

Question 8: Under 35 U.S.C. § 154, where Congress stated no starting date, has Kearns received his seventeen years of "times?"

Question 9: "Has Kearns' "exclusive right to ... (his) discoveries" for "limited times" under 35 U.S.C. § 154 started?"

The Lourie, Rader, and Schall, Circuit Judges panel in *Kearns* v. *Chrysler and American Motors* opined 32 F.3d 1541

('94):

> "Granting the (equitable, 35 U.S.C. § 283) relief[15] requested by Kearns would impermissibly extend the statutory term beyond that established by Congress."

Kearns believes the Lourie, Rader, and Schall panel continue to defend this opinion in their conduct of Kearns' subsequent CAFC appeals and therefore moves this Court for a panel chosen from those CAFC Circuit Judges who have heretofore not judged the patent infringement appeals of manufacturing-inventor Dr. Kearns as allowed under Fed. Cir. R. 47.2(b).

Wood Motors, Inc., *et al.* personnel's own view of their own state of infringement is filed under seal as Exhibit 10 in accord with a protective order. These five documents are with a copy of the letter Kearns wrote to District Judge Joiner in response to the Judge's request to Kearns, with assurance of confidentiality, that he state his position for an upcoming settlement conference to be held under his auspices.

USA ECONOMY v. KEARNS' INTERMITTENT WINDSHIELD WIPER LITIGATION

I. USA Trade Deficit

Our grandfathers had accumulated $180 Billion in foreign credits. In March, 1984, those $180 Billion in foreign credits went to zero with a slope of -$10 Billion per month.

---

[15] An analogous situation to that of Kearns' is represented by the decision in *Burr* v. *Ambarch*, 883 F.2d 1071, 1078, vacated, 492 U.S. 902 (1989), reaffirmed on remand, 888 F.2d 258 (2d Cir. 1989). As held in *J.I. Case Co.* v. *Borak*, 377 U.S. 426, 433 (1964), federal courts have a duty to be alert to provide such remedies as are necessary to make effective the congressional purpose of statutes enacted by Congress.

That was 12 years and 2 months ago. At six percent interest: USA Trade Debt = $(1 + .06)^{12} = 2.1$

12 Years + 2 months = 146 months

146 months x 2.1 x $10,000,000,000 per month

= 306 x $10,000,000,000 = $3,060,000,000,000

6% interest = $180 Billion annually!

Annually, the USA's interest on our trade debt is equal to all the trade credits previous USA generations earned!!!

II. KEARNS' EXPORTS & JOBS

A patent grants the patentee control over the components of his claims. Thus, Kearns *Engineers* would have control of the windshield wiper: motor, linkages, blades, windshield, controls, wiring, etc. Kearns *Engineers* could supply a windshield sub-assembly complete & tuned for intermittent operation with
moisture variable dwell.

Say, $200 per sub-assembly. (1% of $20,000 car.)

There are 30,000,000 manufactured annually.

$200 x 30,000,000 = $6,000,000,000 annual sales.

Half the sales are made overseas. But there is a difference of 2 in Kearns *Engineers* supplying the sub-assemblies overseas. The Mercedes cars, for example, imported into the US would cost $200 less and jobs worth $200 would build the components; manufacture, test, package and ship the exported sub-assemblies.

Thus Kearns exporting would make a difference in USA's trade deficit by

15,000,000 x $200 x 2 = $6 billion annually.

USA current trade deficit = 12 months x $10,000,000,000 = $120 billion

Kearns exporting would erase = $\frac{\$6 \text{ billion}}{}$ = 5%

= $120 billion

20 like-inventors = no USA trade deficit.

Kearns' IWWS represent $6,000,000,000 annually

= 400,000 jobs

= $15,000/ job

Korea: the fastest growing
automobile assembly market

The U.S. Department of Commerce reports Korea is the fastest growing automobile assembly market. Of 1,100,000 automobiles assembled in Korea for the Korean 1994 market, Ford, Chrysler & GM **together** sold a total of 3,192[16].

Respectfully submitted,

Robert W. Kearns, *Pro Se*
Manufacturing-inventor
(410) 827-9337 (Tel/Fax)

CERTIFICATE OF SERVICE

THIS IS TO CERTIFY that a copy of

Appellant Kearns moves this Court to welcome this appeal before a panel chosen from those CAFC Circuit Judges who have heretofore not judged the patent infringement appeals of manufacturing-inventor Dr. Kearns as allowed under Fed. Cir. R. 47.2(b).

was mailed first-class, postage pre-paid to

Barnes & Thornburg
Attn: Lynn C. Tyler
1313 Merchants Bank Building
11 South Meridian Street

---

[16] *The Year in Trade 1994*, Operation of the Trade Agreements Program 46th Report, U.S. International Trade Commission Publication 2894, July 1995

Indianapolis, Indiana 46204

this 11th day of June, 1996.

Bob Kearns

APPENDIX O

NOTE: Pursuant to Fed. R. Civ. P. 47.6, this disposition is not citable as precedent. It is a public record. The disposition will appear in table published periodically.

United States Court of Appeals for the Federal Circuit

96-1314

ROBERT W. KEARNS,

Plaintiff-Appellant

v.

WOOD MOTORS, INC., DAIMLER-BENZ AKTIENGESELSCHAFT, and DR. ING. h.c.F. PORSCHE A.G.,

Defendants-Appellees.

DECIDED: January 17, 1997

Before LOURIE, *Circuit Judge*, FRIEDMAN, *Senior Circuit Judge*, and RADER, *Circuit Judge*

PER CURIAM.

The sole question in this appeal is the propriety of an order of the United States District Court for the Eastern District of Michigan setting the amount the appellant Kearns is required to pay to the appellees as a sanction for Kearns' abuse of discovery, based on the reasonable attorneys' fees and expenses the appellees incurred in dealing with Kearns' discovery abuse. We **affirm**.

Kearns, a former Wayne State University Engineering Professor, holds seven patents relating to electronic intermittent windshield wipers used in automobiles. In other suits alleging infringement of the patents, Kearns has recovered substantial damages from Chrysler Corporation and Ford Motor Company. *See Kearns* v. *Chrysler Corp.*, 32 F.3d 1541, 31 USPQ2d 1746 (Fed. Cir. 1994) (describing the litigation and affirming award to Kearns of more than $18 million).

The present case has a complex and tortured procedural history. In 1978 Kearns filed suit against Wood Motors, Inc., Daimler-Benz Aktiengesellschaft and Dr. Ing. h.c.F. Porsche A.G. (collectively "Wood") for infringement of some of these patents. *Kearns* v. *Wood Motors, Inc.*, No. 78-70642 (E.D. Mich. Mar 11, 1996). In connection with that suit Kearns' son, a licensed private detective, surreptitiously obtained from defendants' counsel's law offices confidential documents of the defendants. Kearns refused to disclose how he or his son had obtained the documents, but it was later determined that Kearns' son had obtained them from a paralegal at the law firm after he had developed an intimate relationship with her. The son also apparently took some of the documents himself. Kearns attached these documents to his motion for summary judgment of the issue of infringement. In response to Wood's motion to enjoin use of the documents, on September 15, 1983, the district court barred dissemination of the documents and ordered Kearns to retrieve them from various persons to whom he had sent them. *See Kearns* v. *Wood Motors, Inc.*, No. 78-70642 (E.D. Mich. Sept. 15, 1983).

Kearns then sought to obtain the documents through normal discovery. Wood responded that the documents were privileged. Kearns moved to compel production of 130 documents within the time frame scheduled, the court agreed to determine whether the two documents Kearns considered most important were privileged. On June 26, 1984, the court determined that work-product privilege covered both of those documents. *See Kearns* v. *Wood Motors, Inc.*, No. 78-70642 (E.D. Mich. June 26, 1984).

Wood then moved to dismiss the case and/or for sanctions against Kearns for discovery improprieties, including his improper acquisition of the documents and his repeated refusal to explain how he had obtained them. After a lengthy evidentiary hearing, the court issued a Memorandum Opinion and Order Imposing Sanctions and Permitting Withdrawal of [Kearns'] counsel on February 3, 1987 ("the 1987 Memorandum Opinion"). *See Kearns* v. *Ford Motor Co.* (*Wood Motors, Inc.*) 114 F.R.D. 57, 2 USPQ2d 1321 (E.D.Mich. 1987). After describing in detail the conduct of Kearns and his son, the court ruled that Kearns' son had acted wrongfully, that his actions were attributable to Kearns, and that their "conduct was a deliberate and studied strategic decision to circumvent the discovery process" by "willful and deliberate" "misconduct." *Id.* at 66, 2 USPQ2d at 1327-28. Relying on Fed. R. Civ. Proc. 37(b)(2), the court sanctioned Kearns, ordering him to pay Wood the costs, expenses and attorney fees incurred as a result of Kearns' acquisition and retention of the confidential documents. The court also ordered Kearns to pay $10,000 to the court for his "flagrant waste of judicial resources." *Id.* at 67, 2 USPQ2d at 1329.

The court permitted Kearns' counsel to withdraw because "the undisputed facts are replete with instances of disharmony and outright confrontation between Kearns, his son and counsel .... The record shows that on many occasions Kearns and his son have completely disregarded the advise of counsel and taken their own path." *Id.* 2 USPQ2d at 1329. The court urged Kearns to retain new counsel, explaining that "[g]iven the past problems plaintiff has had with law firms, he should begin now and proceed as expeditiously as possible in retaining new counsel. Waiting to seek out new counsel until the disposition of the sanctions matter would be highly imprudent." *Id.* at 68, 2 USPQ2d at 1329. Sometime thereafter, Kearns began to appear pro se.

Kearns appealed from that order, but this court dismissed the appeal because the order was not final since the amount Kearns was to pay Wood had not been determined. *See Kearns* v. *Ford Motor Co. (Wood Motors, Inc.)*, No. 87-1356 (Fed. Cir. July 16, 1987).

On October 29, 1987, the district court determined that Kearns was required to pay $123,791 in sanctions to Wood. The award did not include interest or indicate the time for payment. Kearns did not appeal from that order.

In August 1988, Wood moved pursuant to Fed. R. Civ. P. 37, to dismiss Kearns' infringement complaint because of Kearns' failure to comply with discovery orders or to make discovery. The motion also requested the court to order Kearns to pay Wood the sanctions imposed by the 1987 Memorandum Opinion. The district court referred the motion to a magistrate-judge, who recommended in a report that the sanction award be modified to add interest and to require payment within 30 days-("Report"). The Report reiterated the factual findings of the 1987 Memorandum Opinion.

Kearns timely objected to the Report, alleging that it (1) improperly modified the award of sanctions without adequate grounds, requiring payment within 30 days and required him to return the wrongfully-obtained documents; (2) contained incorrect factual findings; and (3) order Kearns to pay the sanctions before the motion to dismiss was decided. After a hearing on Kearns' objections to the Report, the court stayed action on the sanctions until the merits were decided.

The district court consolidated the present case with patent infringement actions Kearns had filed against other automobile manufacturers. At a hearing on Kearns' ability to handle the case himself, the court asked "Dr. Kearns, if I were to tell you that if you do not retain counsel within 30 days and give that counsel complete authority to manage the case as that counsel sees is appropriate the case will be dismissed, what would you say?" Kearns replied that he would "find it totally impossible to take any patent litigating attorney" and that he would "never hire them." Transcript of proceedings at 1820, *Kearns* v. *Toyota*, No. 85-CV-70459-DT (E.D. Mich. January 26, 1994). On January 28, 1994, the court dismissed with prejudice all those cases, including the present one, for the following reasons:

> The Court being satisfied that, after giving full consideration to the record in the case, as well as the records in the Chrysler and General Motors cases, the Special Master's report and the letters from counsel for defendants in this case and also lacks the ability to adequately represent himself in the trial of this case, and plaintiff having categorically refused to retain counsel with authority to manage the case in a manner that would be appropriate, proper and prudent;
>
> The Court having taken note of the manner in which plaintiff has responded to the discovery matters outstanding in this case and the manner in which he has responded at the January 26, 1995 hearing to Pretrial Order No. 10, as well as plaintiff's failure to act reasonably with regard to discovery matter, the confusion exhibited in his papers and in his oral presentation to the Court, his inability to focus, his inability to understand the rules of law, his failure to follow the Court's orders, his failure to comply with discovery orders, such that in the Court's view this case will never get to trial, and if it did, plaintiff would be unable to present a case; all of which prejudices defend-ants by subjecting them to inordinate expense in attempt-ing to secure discovery, by depriving them of discovery to which they are entitled,

> and by making it impossible for them to prepare for trial.

Kearns v. *Wood Motors, Inc.*, No. 78-70642, slip op. at 2 (E.D. Mich. January 28, 1994).

Kearns appealed from the dismissal of his complaint, but we held his appeal was untimely and dismissed it. *See Kearns* v. *Toyota*, 53 F.3d 345 (table), 1995 WL 74582 (Fed. Cir.), *cert. denied*, 116 S.Ct. 79 (1995).

On March 11, 1996 the district court issued its Order on Payment of Sanctions ("the Order"), from which Kearns appeals in this case. *See Kearns* v. *Wood Motors, Inc.*, No. 78-70642 (E.D. Mich. Mar. 11, 1996). After referring to its February 3, 1987 order imposing sanctions against Kearns "because of an 'inexcusable' and 'deliberate and studied strategic decision to circumvent the discovery process"' and its October 29, 1987 order setting the sanctions at $123,791, the court increased that amount to $198,310.83 to reflect accrued interest plus interest of $25.13 per day from February 6, 1996 to the date of payment. The order stated that the sanctions "are properly payable" from the approximately ten million dollars on deposit in the court's registry "for the benefit of Dr. Kearns, from the proceedings of judgments in related cases" and "authorized and directed" the clerk of the court to make such payments to the defendants.

This court subsequently held that this order was appealable. *See Kearns* v. *Wood Motors, Inc.*, No. 96-1314 (Fed. Cir. July 15, 1996).

II.

A. Although Kearns is a well-educated and intelligent person, his pro se filings in this case unfortunately reflect an unfamiliarity with and an unawareness of some of the basic tenets and requirements of our federal judicial system. Among the principles that Kearns ignores or overlooks are that litigants must follow the prescribed time limits and procedures, and that once an issue has been finally determined, a litigant cannot relitigate it.

Most of Kearns' principal contentions violate these principles. Thus, although Kearns argues that the imposition of any sanctions was improper, that issue is foreclosed by the 1987 orders that (1) imposed sanctions and (2) fixed the amount. We dismissed Kearns' appeal from the first order as premature, and Kearns did not appeal from the second and final order. The question of the validity of the imposition of sanctions by these two orders therefore is no longer open.

Similarly, Kearns cannot now challenge the dismissal of his infringement complaint, because of his failure timely to appeal the dismissal order. Moreover, the question whether the remaining 128 documents, whose allegedly privileged status the district court did not determine, are privileged, is now moot in view of the dismissal of the complaint. This is because Kearns' claim to those documents related solely to his infringement suit, which is over. Furthermore, in view of the dismissal of his complaint, Kearns cannot now challenge the provisions in prior orders requiring him to return the documents to their rightful owners. Contrary to Kearns' apparent belief, the district court order the documents returned not because they were privileged, but because Kearns had obtained them improperly.

This court has noted the adverse effect Kearns' decision to proceed pro se has had on his ability to conduct his litigation. *See, e.g., Kearns* v. *General Motors Corp.*, 31 F.3d 1178 (table), 33 USPQ2d 1696, 1698 (Fed. Cir. July 26, 1994) ("There is a vast difference between a pro se plaintiff with a meritorious case unable to afford counsel and a pro se plaintiff with a meritorious case declining to employ counsel because of a misplaced lack of trust in lawyers or an inflated opinion notion [sic] of his ability to prosecute his own case. Here we certainly have the latter.") (citation omitted); *Kearns* v. *Chrysler Corp.*, 32 F.3d 1541, 1551 n. 11, 31 USPQ2d 1746, 1753 (Fed. Cir. 1994) ("The fact that Kearns has fired several of his attorneys and attempted to conduct massive multiple suits pro se may be relevant to his dilemma.") Kearns' problems have been largely of his own making. Although Kearns has the right to proceed pro se, he must bear the consequences of that decision.

B. Kearns' contentions on the only issues properly before us - relating to the March 11, 1996 order setting the amount of sanctions and directing the clerk to pay them to Wood out of the funds in Kearns' account in the court's registry - require little discussion.

Kearns argues, as he did in his district court objections to the recommended decision of the magistrate judge, that the order improperly modified the prior orders by increasing the amount of the sanctions to add interest and by requiring payment of the sanctions within 30 days. A judgment ordinarily carries interest to the date of payment and Kearns offers no reason, convincing or otherwise, why the sanction should not also include interest. Since the original order for sanctions did not specify a payment date, payment should have been made within a reasonable time after the order became final. When Kearns had not paid the sanctions after several months, the district court properly imposed a reasonable deadline for doing so.

Kearns also argues that the report of the magistrate judge, upon which the order was based was factually erroneous. The Report largely repeated the district court's findings in the 1987 Memorandum Opinion, and the record supports the Report's findings.

C. In its brief Wood asks us to order Kearns (1) to return all copies of documents in his possession, custody or control relating to Wood, and (2) to file an affidavit stating that he has done so. These requests should be presented to the district court, which has adequate power to compel compliance with any orders it may issue.

Wood also asks us to hold Kearns in contempt for his failure to comply with this court's order of July 17, 1996, that required Kearns to return all copies of Wood Motors' privileged documents to counsel for Wood Motors. It is unclear from the record, however, which documents, if any, Kearns has in fact returned and whether all privileged documents have been returned. Accordingly, we deny Wood's request to hold Kearns in contempt.

Finally, Wood asks us to award it the attorney fees and expenses it incurred in defending against what it views as a frivolous appeal. For the reasons already stated, we agree with Wood that the appeal is frivolous. Although we hesitate to impose sanctions on pro se litigants, we nevertheless will do so "where even a non-lawyer should have been aware that his conduct was frivolous." *Finch* v. *Hughes Aircraft Co.*, 926 F.2d 1574, 1582, 17 USPQ2d 1914, 1921 (Fed. Cir. 1991). Kearns fits within that category. Accordingly, we shall issue an order for Kearns to show cause why Wood's reasonable costs and attorney fees incurred in defending against this frivolous appeal should not be assessed against him.

CONCLUSION

The district court's Order on Payment of Sanctions of March 11, 1996 is

AFFIRMED

96-1314.

APPENDIX P

IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF VIRGINIA ALEXANDRIA DIVISION

ROBERT W. KEARNS,
Plaintiff,
v. Civil Action No. 93-966-A
GENERAL MOTORS CORPORATION, and
BROWN'S BUICK & ISUZU Constitutional Questions
FRAP Rule 44 Applicable
Defendants.

OFFER OF PROOF

This Offer of Proof[17] is directed at proving that the *Ford & Chrysler* trial records confirm that Congress' "securing for limited times to inventor" Kearns "the exclusive right to" his "discoveries" has yet to start since Kearns' U.S. patents[18] were being infringed before the day, on the day, and after the day of their publication by the U.S. Patent Office and thus are Constitutionally available to Kearns in this *General Motors* trial, with Kearns' patents' life-clock starting to tick when the infringements by General Motors are 'remedied' by this 35 U.S. Code §281 civil action. Moreover, Kearns thru Kearns Engineers has exported his Computer Central® products [Exhibit 11] and remains in a position to enhance U.S. trade by his manufacture, sale & export of his intermittent windshield wiper system ("IWWS") discoveries. Since his 'useful arts' were invented under the title 35 patent laws of 1965/80, the 35 U.S. Code § 281 'remedy' of his patents' infringements will result in the automatic change of the General Agreement on Tariffs and Trade ("GATT") Treaty already in force to reflect the provisions of the U.S. Constitution to the advantage of U.S. trade. The ensuing clarification and realization of the inherent meaning within Const. Art. I § 8 by the Judiciary is beneficial to the U.S.A. and to other manufacturing inventors like Kearns as well.

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[17] Evidence Rule 103. Rulings on Evidence

(a) Effect of erroneous ruling. Error may not be predicated upon a ruling which admits or excludes evidence unless a substantial right of the party is affected, and

(2) Offer of proof. In case the ruling is one excluding evidence, the substance of the evidence was made known to the court by offer or was apparent from the context within which questions were asked.

[18] Dr. Kearns invented U.S. patents: Number-mo day yr:
3,351,836-11 7 67;3,422,331- 1 14 67;3,483,459-12 9 69;
3,500,159-12 9 69;3,529,227- 9 15 70;3,564,374- 2 16 71;
3,573,584- 4 6 71;3,581,178- 5 25 71;3,582,747- 6 1 71;
3,593,090- 7 13 71;3,602,790- 8 31 71;3,604,910- 9 14 71;
3,721,115- 3 20 73;3,728,603- 4 17 73;3,737,750- 6 5 73;
3,774,091-11 20 73;3,796,936- 3 12 74;3,876,919- 4 8 75;
3,902,106- 8 26 75;4,339,698- 7 13 82;4,494,059- 1 15 85;
4,494,107- 1 15 85;4,531,066- 7 23 85;4,544,870-10 1 85;
3,458,889[3]-8 5 69;3,643,145[3]-2 15 72.

1st Trial: *Kearns* v. *Ford Motor Company* 78-CV-70740

In *Kearns* v. *Ford*, Ford asserted no defense for infringement in the Joint Pretrial Order for Phase III [Exhibit 12] stating in relevant part:

> "Prior to the Phase 1 Trial, Ford stipulated that if it failed to prove invalidity of the claims or unenforceability of the patents, then the accused Ford IWW[19] systems infringed Dr. Kearns' patent

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[3] acquired by Kearns.

[19] Totalling 20,663,589 vehicles limited by the 6 years statute of limitations.

> claims."
>
> ... . "

Ford also stipulated that,

> "[I]f it did not prove invalidity or unenforceability of claim 14 of the '790 patent, then claim 6 of the '178 patent would be deemed to be valid, enforceable and infringed."

The *Kearns* v. *Ford* Partial Judgment [Exhibit 13] confirms:

> This case came on for trial on January 3, 1990, before the Court and a jury, Honorable Avern Cohn, District Judge presiding.
>
> On January 18, 1990, the issues of whether Ford had adequately proved the invalidity or unenforceability of the following patent claims were submitted to the jury:
>
> U.S. Patent 3,351,836, claim 16;
> U.S. Patent 3,564,374, claim 6;
> U.S. Patent 3,582,747, claim 3;
> U.S. Patent 3,602,790, claim 14;
> U.S. Patent 3,796,936, claim 3.

On January 29, 1990, the jury returned a unanimous verdict that Ford had not proved the invalidity or unenforceability of any of the foregoing patent claims.

By the terms of the pretrial order: claim 6 of 3,581,178 would also be deemed to be valid, enforceable and infringed; and all Ford IWWS production and sales infringed Kearns' IWWS U.S. patents. The Ford infringements began with the Ford IWWS experiments leading to their design into the 1969 model Ford which was in dealers' showrooms in August of 1968. The 1969 model Ford design and experiments began in 1964 while Kearns' '836 patent issued only nine months earlier than the 1969 Ford. Kearns worked and met with Ford's Advanced Electrical Design group that included: Roger Shipman; Tony Ryff; and John Jenks among others for 1 to 3 afternoons a month from 1964 thru 1966. John Jenks appeared at trial as Ford's 'inventor' while in Shipman's deposition he stated that Kearns was on Ford's 'design team.'

This Ford trial infringement by itself proves Kearns' IWWS patents were infringed before the day, on the day and after the day of their publication using the Court of Appeals for the Federal Circuits citation with approval of "use" in the treatise by W. Robinson, *The Law of Patents for Useful Inventions* § 898 (1890)[20]. A relevant quotation being:

> "But if the products of the experiment are sold, or used for the convenience of the experimentor, or if the experiments are conducted with a view to the adaptation of the invention to the experimentor's business, the acts of making or of use are violations of the rights of the inventor and infringements of his patent." [Exhibit 14]

Kearns' relationship with Ford engineering personnel began after he installed his IWWS in his family car in September, 1963 [Exhibit 15] and found he had a temperature problem in that the wipers would come on (rain or shine) after the temperature within the car rose sufficiently. That led to Kearns seeking a specification of the automobile environment. Exhibit 5, P012469, from September 1963, is the intermittent windshield wiper system that Kearns installed in his family car.

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[20] *See, Roche Products* v. *Bolar Pharmaceutical Co.*, 733 F.2d 8588, 862 (Fed. Cir. 1984). [Exhibit 4} Kearns cooperated with Mr. Shipman and the Advanced Electrical Design Group because Kearns understood from Shipman that he could qualify to be the supplier-to-Ford of his IWWS discoveries.

On October 22, 1963, [Exhibit 16] P012498 Kearns de-monstrated the external features of his intermittent windshield wiper system inventions to John Ciupak and Tom Feaheny of the Ford Motor Company of Ford Engineering. Mr. Ciupak made an appointment for Kearns with Executive Engineer Joe Neill for Friday, October 25, 1963 at 1:30 p.m.. Upon Kearns making more 'external feature' demonstrations, Kearns recei-ved a telephone call from Roger Shipman which started the
Kearns-Ford relationship on a serious note.

On October 25, 1963 [Exhibit 17] P012499 Kearns again demonstrated the external features of his inventions to Mr. Neill and also Bob Burby, Project Engineer, Ted Daykin, Mike Bozoian, Manager of Windshield Development among others. Mr. Neill requested that Kearns provide him with a price estimate based on Mercury sales expectations. Kearns learned the temperature under the hood was 270 °F and that the windshield wiper motor was subjected to a life test of 3 million cycles. On December 12, 1963 Kearns responded to Executive Engineer Joe Neill. [Exhibit 18] On June 29, 1964 Kearns solved his temperature problem and began his life test. On November 16, 1964 [Exhibit 19] P012879 the Kearns-life-test completed 3.4 million cycles.

On March 16, 1967, Kearns reports to patent attorney Lane, that he has prepared a brochure for Roger Shipman of Ford "with the purpose of showing them how many systems are available from our patent base." [Exhibit 20]

On May 9, 1967, Kearns writes to Mallory & Co. for Kearns Engineers to receive potentiometers and switches for Kearns Engineers to supply on the '69 model Fords which are in their dealers' showrooms in August '68. [Exhibit 21] 06000099 and Defendants' Trial [Exhibit 262.]

The above activities of Ford beginning in 1963 and the

Trial Judgment of 1990 confirm Ford was infringing Kearns' IWWS patents before the day, on the day and after the day each Kearns IWWS patent was published by the U.S. Patent Office.

2nd Trial: *Kearns* v. *Chrysler Corp.* 82-CV-70748

On October 29, 1963 [Exhibit 22] P012509 & 10 Kearns again demonstrated the external features of his inventions to Chrysler Engineering personnel, Rodgers, Keeler, Riley, Jones, and wiper laboratory technicians Wagner & Willsie. Kearns did not learn anything technically new toward the wiper environment from Chrysler engineering personnel.

On December 9, 1964, [Exhibit 23] Kearns again demonstrated the external features of his inventions to Chrysler engineering management personnel. *See*, Plaintiff's Deposition Exhibit 10 of 5-23-91. Note the ADDENDUM of the last line of the exhibit, "department 3840 has received a system schematic and is reviewing it."

On January 16, 1965, [Exhibit 24] KCA 0009025 Chrysler engineer S.R. Ward drew the Tann-Kearns intermittent windshield wiper system into a Chrysler wiper system engineering drawing. Compare [Exhibit 25] the "1", "2", "3" and "4" of Kearns' '836 U.S. patent's Fig. 2 with the Chrysler-Ward system drawing. Also, compare the '836 Fig. 2 with the "1", "2", "3" and "4" of Ford Motor Co.'s manufactured and sold wiper system [Exhibit 26] and the Chrysler wiper system, Part 03501801 [Exhibit 27] found by the Detroit jury to infringe Kearns patents.

On February 5, 1965, [Exhibit 28] KCA 0011375 Chrysler's Lon H. Romanski reports to his file that Chrysler's "Mr. Hughes called today informing me that it has been approved by all concerned to provide the intermittent wipe on all of our C-Series models. He said that it would be the type employing a time delay relay [Kearns' invention] instead of the vacuum type as the Mercury Division has. (Ford management later abandoned the vacuum type in favor of Kearns' invention.)"

On September 22, 1966, Chrysler's Chief Engineer and Manager of Dodge Car Product Planning reports to Tann-Kearns that Chrysler has been testing the Kearns inventions "since early summer" through September, 1966 with plans to continue testing and evaluating to December, 1966. [Exhibit 29]

In February, 1968, Kearns provided (another) windshield wiper systems to Chrysler Engineering installed in a Chrysler Barracuda model [Exhibit 30] KCA 0009032.

Again, using the "1", "2", "3" & "4" of Kearns' '836 Fig. 2 compare the Chrysler's so-called 'inventors' concept-disclosure to Chrysler management of his wiper control invention [Exhibit 31] [Plaintiff's Exhibit 269] and Chrysler inventors'-at- trial Meisterfeld and Orris disclosure of August 11, 1975 [Exhibit 32].

Kearns Engineers' Dennis Kearns' quotation to Chrysler is shown in Exhibit 33. [Plaintiff's Exhibit 166] Note, the price includes metal parts accompanying the intermittent windshield wiper systems per the listed tool costs. Kearns Engineers provided 20 pre-tested samples [Exhibit 34] with their quotation. The Chrysler jury-found-infringing system is also shown in Exhibit 24.

On May 23, 1974 Chryslers' Manufacturing-Source and Facility Planning Committee recommended to Chrysler management [Exhibit 35] that Kearns Engineers' quotation not be accepted as "The recurring profit at sales trend volumes to replace 3-Speed with Intermittent Wipe is $13.4 million annually when sourced to [Chryslers'] Indianapolis Electrical

Plant." "Because of the greater customer appeal and merchandising profit, it is Product Planning's preference that intermittent wipe be offered on all cars Job #1, 1976."

The *Kearns* v. *Chrysler* Final Judgment is given in Exhibit 36 and states in relevant part:

> "On November 22, 1991, the issue of whether plaintiff, Robert Kearns (Kearns) proved by a preponderance of the evidence that defendant Chrysler Corporation (Chrysler) infringed the following patent claims: U.S. Patent No. 3,351,836, claim 16; U.S. Patent No. 3,564,374, claim 3; U.S. Patent No. 3,602,790, claim 14; and U.S. Patent No. 3,581,178, claim 7, was submitted to the jury. On December 10, 1991 the jury returned a unanimous verdict in favor of Kearns."

Chrysler's engineering development of the trial IWWS began in 1965 with the S.R. Ward IWW Chrysler system drawing and continued uninterrupted through trial in 1991. A period of time which contained all the publication dates of Kearns' U.S. IWWS patents.

Thus, Kearns has shown that Chrysler's "use" by the standard in the W. Robinson treatise, *supra*, infringed Kearns IWWS U.S. patents before the day, on the day and after the day of their publication by the U.S. patent office, as did Ford.

Introduction to the Founding Fathers' Constitutional clause and the members of Congress' Patent Act of 1965/80

All Dr. Kearns' U.S. inventions, (footnote 2) were invented under the Title 35 Patent Act of 1965\80:

> **§ 154. Contents and term of patent.**
>
> Every patent shall contain a short title of the invention and a grant to the patentee, his heirs or assigns,

> for the term of seventeen years, subject to the payment of fees as provided for in this title, of the right to exclude others from making, using, or selling the invention throughout the United States, referring to the specification for the particulars thereof. A copy of the specification and drawings shall be annexed to the patent and be a part thereof.
>
> As amended July 24, 1965, Pub.L. 89-83, § 5, 79 Stat. 261; Dec. 12, 1980, Pub. L. 96-517, § 4, 94 Stat. 3018.

1980 Amendment. Pub.L. 96-517 substituted "payment of fees" for "payment of issue fees."

1965 Amendment. Pub.L. 89-83 added "subject to the payment of issue fees as provided for in this title."

* * *

The *standard of compensation* for U.S.A. inventors is given in Const. Art. I § 8 cl 8 [Exhibit 37]:

"The Congress shall have the power:

> "To promote the progress of science and the useful arts by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries."

What the U.S. Constitution required to be secured by Congress is:

> "for limited times[21] ... the exclusive right to their ... discoveries." (Emphasis added.)

to exercise the power to have a Constitutional U.S. patent system.

"Pursuant to this constitutional authority, Congress

---

[21] (times [note plural]— not money — not damages)

> in 1790 enacted the first federal patent and copyright law, 1 Stat. 109, ..." *See*, *Sperry* v. *Florida*, 373 U.S. 379 (1963).

Congress has been working to get the patent system in accord with the Constitution and the reader should note:

> 1) neither Const. Art. I § 8 cl 8 nor § 154 of the Patent Act of 1965/80 explicitly state when the "for limited times" are to start; and,
>
> 2) Dr. Kearns and his circumstance to be described further in this Offer of Proof is the Constitutional Supreme Court case to confirm that there was no need: for the Founding Fathers in Const. Art. I § 8 cl 8; nor, for the members of Congress in 35 U.S. Code § 154; to explicitly state when the "for limited times" are to start to be a patent law in accord with the U.S. Constitution.

Please re-read Const. Art. I § 8 cl 8:

> "[S]ecuring for limited times to ... inventors the exclusive right to their ... discoveries."
>
> "It cannot be presumed that any clause in the Constitution is intended to be without effect" *Marbury* v. *Madison*, 1 Cranch 137, 174 (1803).
>
> "Of course, I also know that the Constitution itself is what was ratified-not the founders' intentions.[22]"
>
> "So if a law be in opposition to the Constitution; if both the law and the Constitution apply to a particular case, so that the court must either decide that case

---

[22] *Interpreting the Constitution* — The Supreme Court and the Process of Adjudication, page 56 by Harry H. Wellington, Sterling Professor of Law at Yale Law School. He was dean of the Law School from 1975 to 1985.

> conformably to the law, disregarding the Constitution; or conformably to the Constitution, disregarding the law; the court must determine which of these conflicting rules govern the case. This is the very essence of judicial duty.
>
> If then the courts are to regard the Constitution; and the Constitution is superior to any ordinary act of the legislature; the Constitution, and not such ordinary act, must govern the case to which they both apply." *Marbury* v. *Madison*, 1 Cranch 137, 178 (1803).

Are the "for limited times" to be "secured"
to the inventor at times different from when
'the "exclusive right" to the discovery'
are to be secured?

'The "exclusive right" to the discovery' for no "secured" "for limited times" is what (s)he had when (s)he discovered the new knowledge. No promotion of science and the useful arts occurs under those conditions.

Are the "for limited times" to be "secured"
to the inventor at times partially overlapping
that time when 'the "exclusive right to the
discovery' are secured?

One being secured without the other being secured at the same time is of no value. The over-lapping time is the only portion of "for limited times" that has value. The Supreme Court recognized that fact when in *Sears, Roebuck & Co.* v. *Stiffel Co.*, 376 U.S. 225, 228 it said:

> "The grant of a patent is the grant of a statutory monopoly. ... During that period of time no one may make, use, or sell the patented product without the patentee's authority."

With that understanding, Dr. Kearns begins his proof:

'A statutory monopoly' is granted concurrently with
'the "for limited times" of Clause 8'. (1)

Since sentence (1) is true, then reversing the sentence:

'The "for limited times" of Clause 8' is granted
concurrently with 'a statutory monopoly.' is also true. (2)

'A statutory monopoly' of (1) is 'the "exclusive right"
of Clause 8.' (3)

Substituting the phrase, 'the "exclusive right" of Clause 8' for what is equal to it from (3): the phrase, 'a statutory monopoly' into sentence (2), we obtain the sentence:

'The "for limited times" of Clause 8' is granted
concurrently with 'the "exclusive right" of Clause 8.' (4)

'The "for limited times" of Clause 8' includes a
'first moment of "for limited times" of Clause 8.' (5)

'The "exclusive right" of Clause 8' includes a
'first moment of "exclusive right" of Clause 8.' (6)

Since 'the "for limited times" of Clause 8' and
'the "exclusive right" of Clause 8' occur
concurrently in sentence (4),
it is also true that
'the first moment of "for limited times" of Clause 8'
is granted concurrently with
'the first moment of "exclusive right" of Clause 8.' (7)

We pause here to ask,
"Can an infringement exist at 'the
first moment of "exclusive right" of Clause 8?'" (8)

The answer to sentence (8) depends upon the
legal actions of the inventor or patentee to whom
the patent is granted. *See*, p. 23. (9)

If as in sentence (4), 'the "exclusive right" of Clause 8'

occurs concurrently with 'the "for limited times" of
Clause 8', then from sentences (4), (5) and (6),
'the first moment of "for limited times" of Clause 8' occurs
with 'the first moment of "exclusive right" of Clause 8.'(10)

Our question in this Offer of Proof is:

"When does the Clause 8 "for limited times" start?"

The start of "for limited times" = 'the first moment of
"for limited times." of Clause 8.' (11)

Substituting into (10), 'the start of "for limited times"
of Clause 8', for 'the first moment of "for limited times"
of Clause 8' we obtain:

'The start of "for limited times" of Clause 8' occurs with
'the first moment of "exclusive right" of Clause 8.' (12)

Quod erat demonstratum.

Sentence (12) is Dr. Kearns' answer to our question in this Offer of Proof.

Having done that much analysis, we note as in (5),
'the "for limited times" of Clause 8' includes an 'intermediate moment of "for limited times" of Clause 8.' (13)

and, as in (6),

'the "exclusive right" of Clause 8' includes an
'intermediate moment of "Exclusive right" of Clause 8.'(14)

Substituting (13) and (14) into (4) we obtain,

'the intermediate moment of "for limited times" of Clause 8'
occurs with 'the
intermediate moment of "exclusive right" of Clause 8.' (15)

Similarly, from (4) no '"for limited times" of Clause 8'
is granted concurrently with
no '"exclusive right" of Clause 8.' (16)

No '"exclusive right" of Clause 8' = infringement (17)

Substituting "infringement" from sentence (17) for no '"exclusive right" of Clause 8' into (16) we obtain,

No' "for limited times" of Clause 8' is granted concurrently with infringement. (18)

Quod erat demonstratum.[23]

That is, the "for limited times"-life-clock stops when infringement occurs intermediate into the inventor's "for limited times" until the inventor's "exclusive right" is re-established through the 35 U.S. Code § 281 'remedy' civil action. When infringement is adjudged, the 'remedy' includes that the civil action occurred under a stopped life-clock.

Over-all, this means that the "for limited times" can resume and stop; resume and stop; and resume and stop, giving meaning to the plural "for limited times" in Art. I §8 cl 8.

* * *

Kearns' analysis was endorsed by Professor H.W. Mergler, Ph.D. in his Amicus Curiae Brief and urged the court to act favorably on Dr. Kearns' "logical thought." [Exhibit 38]

While these Dr. Kearns-Proofs are different results from the results recognized in the present practice of the Judiciary, it has been proved that, the Constitutional standard of compensation to inventors is *complete* in Art. I § 8 cl 8 and means Congress' use of the phrase "term of 17 years" is unConstitutional and Congress can only set the quantity of time at, say, 17 years with the total span of the quantity of time depending upon the "success" of the invention, using the word "success" to mean the invention is infringed more times by more infringers.

---

[23] Professor Mergler's (proposed) Amicus Curiae Brief wherein he states, "I endorse his (Dr. Kearns') analysis ... ." is presented with Dr. Mergler's resume in Exhibit .

Thus, Dr.-Kearns-Proofs mean litigation-delay will no longer be a defense to infringement.

With the patent law no longer encouraging delay through the 'ticking' of the patent life clock, increases in Judicial efficiency will also follow action on this Offer of Proof.

In private correspondence with Commissioner Mossinghoff, he wrote to Dr. Kearns:

> "It is not unusual for patents to expire during infringement trials."

Dr.-Kearns'-Proof Results
Apply in These Situations

What are the situations, that are lawful under the patent law, but when they occur, may cause the inventor to lose control of his discovery before the publication of the inventor's patent?

There are two such situations.

A first situation that may occur is during the one year public use bar of 35 U.S. Code § 102(b):

> "A person shall be entitled to a patent unless—
>
> (b) The invention was ... in public use or on sale in this country, more than one year prior to the date of the application for patent in the United States, ..."

"Inventor may monopolize invention for statutory period, if he applies for patent before bar of public use intervenes." *Pyzel* v. *Black*, 1928, 24 F.2d 281, 58 App. C.C. 16.

A second situation is, that after he has made application to the Patent Office for a patent to his new discovery, he may lawfully tell others of his discovery during the time of review within the Patent Office. 35 U.S. Code § 122.

Thus, in the general case, the beginning of the "for limited times" must take into account these opportunities for an infringement to occur. From the Supreme Court statement, **p. 3, l. 24,** *supra*, the grant of a monopoly must be delayed if the conditions of a monopoly are shown not to have existed on the publication date of the invention by the Patent Office to the public. And, should infringement occur after the "for limited times' clock begins running —— the "for limited times" clock stops until the 35 U.S. Code § 281 'remedy' civil action re-establishes the "exclusive right."

* * *

The 'summary-quote,' found at 35 U.S.C.A., for *Woodbridge* v. *U.S.*, 1923, 263 U.S. 50, 55 is:

> "It was the legislative intention that the term was to run from the date of issue of the patent, ..."

but there is no analysis in *Woodbridge* that would change the Constitutional standard of compensation to inventors from the Dr.-Kearns-proofs. Ratified words of Const. Art. I § 8 cl 8 remain superior to legislative intent found in *Woodbridge*.

The U.S. Constitution is "the supreme law of the land." *See*, *Sperry*, *supra*.

> "Of course, I also know that the Constitution itself is what was ratified — not the founders' intention."
>
> "It cannot be presumed that any clause in the Constitution is intended to be without effect." *Marbury* v. *Madison*, 1 Cranch 137, 174 (1803).

The Detroit District Court in Kearns' first case, *Kearns* v. *Wood Motors, Inc., Daimler-Benz Aktiengesellschaft and Dr. Ing. h.c.F. Porsche A.G.* denied Kearns a preliminary injunction stating in relevant part: [Exhibit 39]

> It is true that if plaintiff's patent were to expire prior to a decision finding the patent valid and

> infringed, the plaintiff's anticipated position as a major supplier of the windshield wiper system would be undermined. The short answer to this contention is that this action will be completed before the expiration date of plaintiff's patent. The court would therefore be able to enjoin the infringement of this patent if plaintiff is successful on the merits and plaintiff would be allowed the marketing foothold which he fears would otherwise be lost.
>
> Pursuant to the foregoing, the Court will deny plaintiff's Motion for a Preliminary Injunction.
>
> January 10, 1980 Philip Pratt

Judge Pratt unfortunately died prior to achieving his short answer.

Both in *Kearns* v. *Ford* and *Kearns* v. *Chrysler*, Kearns' attorney was denied a hearing at which he could present evidence of Kearns' entitlement to equitable relief [Exhibit 40] adjudgi:

> "Money damages have traditionally been held adequate to compensate for infringement."

For the Detroit District Court to force Dr. Kearns to take money to 'remedy' infringement constitutes the Detroit Court enforcing a compulsory license to Ford from Kearns. In 1938 [Exhibit 41] the McFarland Bill, advocating that a 'compulsory licensing' section be added to the U.S. Patent Law, was rejected by the Congress.

Moreover, following a status conference of *Kearns* v. *Audi & VW, et al.*; *Kearns* v. *General Motors*; *Kearns* v. *Porsche, Mercedes & SWF*; and *Kearns* v. *Ferrari* (that includes *Toyota*) *et al.* in which the Detroit District Court explained his 'new problem' [Exhibit 42] all the above cases were dismissed in which Kearns sought to enforce his patent rights against infringement. Thus, Kearns asserts as further proof his entitlement to use his patents alleged in the Detroit District Court against General Motors in this trial:

"35 U.S. Code **§ 271. Infringement of patent**

> (d) No patent owner otherwise entitled to relief for infringement or contributory infringement of a patent shall be denied relief or deemed guilty of misuse or illegal extension of the patent right by reason of his having done one or more of the following:
>
> (3) sought to enforce his patent rights against infringement or contributory infringement. July 19, 1952, c. 950, § 1, 66 Stat. 811."

Res judicata in favor of General Motors and against manufacturing inventor Kearns, is not applicable in this trial. In view of the fact that our country is dying, see below, Kearns informs this Court that on 24 March 1994 Dr. Kearns filed:

> PARTY KEARNS' MOTION FOR JUDGE COHN TO DISQUALITY HIMSELF UNDER 28 § 144 & § 455, and, AFFIDAVIT OF ROBERT W. KEARNS IN SUPPORT OF DISQUALIFICATION OF JUDGE COHN UNDER TITLE 28 § 144

that included the land records of Oakland County, Michigan that Judge Cohn sold land in the Detroit suburban area to SWF for their headquarters and land to Chrysler Corp. for their technical center.

In 1993, SWF bought from Chrysler (General Motors) their Delco Division. Kearns finds it ironic that the SWF who made the infringing IWWS for Daimler-Benz, Porsche, and Renault should be the one company to buy the General Motors Delco Division! [Exhibit xx]

* * * * * * *

Introduction

Mary and June are sisters of their brother, Jim, who live together in a house provided and protected by their uncle Sam.

Mary had saved ten dollars which she paid Jim to repair her car. Jim used those ten dollars to have June clean his bedroom. June used the ten dollars to have Mary sew the rip in her gown. While these transactions represent economic activity encouraged by the U.S. Department of Commerce, how do they help their Uncle Sam to pay the rent on their home?

They don't. The members of a family must go outside their own family border and provide goods and services to other families for the economic activity to 'count' and be available to their Uncle Sam to pay the 'rent' to others outside their 'home' borders.

* * * * * *

In January 1984, Plaintiff Kearns ("Dr. Kearns") was invited to give a speech by, and did so before, the members of the Rotary Club of Montgomery County, Maryland. In that speech, Dr. Kearns informed the club members, that all the U.S. grandparents, back to the time of the Pilgrims, had accumulated a total of foreign trade credits of $180 *b*illion with other nations. But in two more months:

> the present U.S. family would have dissipated those foreign trade credits; the downward slope of those transactions was $10 *b*illion per month; and in March of 1984, the United States would join Mexico as a debtor nation.

Global Competition is from the cover and reports of President Reagan's Commission on Industrial Competitivness.

[Exhibit 43]

That was 13 years and 4 months ago; 160 months ago. The slope of our trade deficit has not changed. The trade debt is now 1600 billion dollars. At 6%, the interest on that trade debt is now ($)100 billion annually.

In short words of reality, our U.S. family of today acquires a new debt total of $180 billion, **in interest alone**,—equal to the amount of credits all our grandparents had worked for and saved from the time of the Pilgrims—, each 22 months!

Our U.S.A. is dying from our present foreign trade deficit!

* * * * *

Dr. Kearns' copy of the U.S.'s General Agreement on Tariffs and Trade ("GATT[24]") Treaty totals 2,061 pages.

The Commissioner of Patents & Trademarks, Lehman, brought to Dr. Kearns' attention a Congressional 'escape' clause found on page 15: § 102:

> (a) RELATIONSHIP OF AGREEMENTS TO UNITED STATES LAW.—
>
> (1) UNITED STATES LAW TO PREVAIL IN CONFLICT.—
>
> No provision of any of the Uruguay Round Agreements, nor the application of any such provision to any person or circumstance, that is inconsistent with any law of the United States shall have effect.

Inventor, Dr. Kearns and his circumstances are before this Court.

In 1964 (1957), Robert W. Kearns, Ph.D., formed

---

[24] *Uruguay Round Trade Agreements*, House Document 103-316, Vol. 1, 103d Congress, 2d Session (Sept., 1994). Gov't. printing office.

Kearns *Engineers* as a family business. To provide security for his own job, and the jobs of Kearns *Engineers* employees he recognized, that he needed to manufacture, and sell patented products, to obtain the exclusive rights proffered by Const. Art. I § 8 cl 8.

He was motivated further after reading Congress' promises in *The Patent System and the Modern Economy*[25]:

> "(T)he patent system provides a protected market with the opportunity for unusual profit necessary to justify the heavy investment in time, effort, and capital necessary to bring the improvement to the public. This same protected market provides an entering wedge by which a business enterprise entering a new field can overcome the obstacles that otherwise discourage entry into an industry already populated."

Respectfully submitted,

Robert W. Kearns, Ph.D., *Pro Se*
301 Houghton Laboratory Lane
Queenstown, Maryland 21658
410-827-9337 (Tel/Fax)

CERTIFICATE OF SERVICE

THIS IS TO CERTIFY that a copy of OFFER OF PROOF was mailed first class, postage prepaid to:

The Honorable Janet Reno
Attorney General of the U. S.
Department of Justice
Tenth and Constitution, N.W.

Mr. Drew S. Days III
Solicitor General
U.S. Department of Justice
Washington, D.C. 20530

---

[25] Study No. 2 of the Subcomm. on Patents, Trademarks and Copyrights of the Senate Comm. on the Judiciary, 84th Cong., 2d sess. (1957), page 5. Congressional Library Microfilm #11997.

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Washington, D.C. 20530

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22314-3187
(At the Alexandria, post office)

this 15th day of July, 1997.

Bob Kearns

APPENDIX Q

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

ROBERT W. KEARNS,)
Plaintiff,)
vs.) Cause No. 78-70642
WOOD MOTORS, INC.,) JUDGE COHN
DAIMLER-BENZ AKTIENGESELLSCHAFT,)
and DR. ING. h.c.F. PORSCHE A.G.,)
Defendants.)

ORDER ON PAYMENT OF SANCTIONS

This matter came before the Court on the "Verified Motion for Payment of Sanctions Previously Awarded from Funds on Deposit in Court's Registry" ("the "Motion") filed by defendants, Wood Motors, Inc., Daimler-Benz Aktiengesellschaft and Dr. ING. h.c.F. Porsche A.G. (the "Defendants"). The Court, having examined the Motion, held a hearing and being otherwise duly advised in the premises, enters the following FINDINGS OF FACT:

1. On March 11, 1996, this Court (Cohn, J.) entered an order directing payment of sanctions against Dr. Kearns because of his "inexcusable" and "deliberate and studied strategic decision to circumvent the discovery process" be made to the Defendants out of funds on deposit in the Court's Registry for the benefit of Dr. Kearns. Dr. Kearns appealed this order.

2. On January 17, 1997, the U.S. District Court of Appeals for the Federal Circuit affirmed this Court's Order on Payment of Sanctions. Characterizing Dr. Kearns' appeal as "frivolous," the Federal Circuit imposed further sanctions equal to the reasonable amount of attorney fees and costs

incurred by the Defendants in the course of defending against the appeal.

3. On March 19, 1997, the Circuit Court of Appeals for the Federal Circuit entered an Order directing the Defendants to submit a statement showing these costs and fees. The Defendants filed their "Verified Statement of Defendants-Appellees on Fees and Costs" on April 21, 1997. This statement identified attorney fees of $42,123.50 and actual and necessary expenses of $5,952.44 for a total of $48,075.94.

4. On May 28, 1997, the Federal Circuit entered an Order accepting the Defendants' statement of costs and fees as reasonable and directing Dr. Kearns to pay $48,075.94 to the Defendants.

5. On June 6, 1997, the Defendants, by their counsel, sent a letter to Dr. Kearns advising that they would apply to this Court for an order directing payment of $48,075.94 out of the funds on deposit in the Court's Registry if he failed to make payment of that amount before June 16, 1997. Dr. Kearns did not respond.

6. There is approximately $10,000,000 on deposit in the Registry of this Court for the benefit of Dr. Kearns from the proceeds of judgments in related cases.

7. Dr. Kearns has failed to pay the Defendants the award of sanctions and the Defendants should not have to suffer any additional delay.

8. If any of these findings of fact are more properly conclusions of law, the Court adopts and incorporates them as its conclusions.

Based upon these findings of fact, the Court enters the following CONCLUSIONS OF LAW:

1. The full amount of the sanctions previously awarded to

the Defendants from Dr. Kearns is due and owing at this time.

2. The sanctions are properly payable to the Defendants out of the funds on deposit in the Court's Registry for the benefit of Dr. Kearns.

3. The Clerk of this Court should disperse to the Defendants, in care of their counsel, the sum of $48,075.94 from the funds in the Court's Registry for the benefit **on** Dr. Kearns. (**Emphasis** added.)

4. If any of the foregoing conclusions of law are more properly findings of fact, the Court finds and incorporates such facts.

THEREFORE, IT IS ORDERED that the Defendants' Motion is GRANTED. The Clerk of this Court is authorized and directed to pay to the Defendants the sum of $48,075.94 out of the funds on deposit in the Court's Registry for the benefit of Dr. Kearns. The payment shall be sent to the Defendants in care of their counsel, Donald E. Knebel, BARNES & THORNBURG, 1313 Merchants Bank Building, 11 S. Meridian Street, Indianapolis, Indiana, 46204.

SO ORDERED.

Date AUG 06 1997 (stamped) AVERN COHN

Judge, United States District Court

TRUE COPY
J. Cassady

DISTRIBUTION:

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INDS02 JJJ 153091

APPENDIX R

United States Court of Appeals for the Federal Circuit

ORDER

A combined petition for rehearing and suggestion for rehearing in banc having been filed by the APPELLANT, and the petition for rehearing having been referred to the panel that heard the appeal, and thereafter the suggestion for rehearing in banc having been referred to the circuit judges who are in regular active service,

UPON CONSIDERATION THEREOF, it is

ORDERED that the petition for rehearing be, and the same hereby is, DENIED and it is further

ORDERED that the petition for rehearing in banc be, and the same hereby is, DECLINED.

The mandate of the court will issue on February 24, 1998.

FOR THE COURT,
JAN HORBALY, CLERK

Dated: February 17, 1998

By s/ Alex Van Veen
Alex Van Veen
Staff Law Clerk

cc: Robert W. Kearns
Lynn C. Tyler

FILED
U.S. COURT OF APPEALS FOR
THE FEDERAL CIRCUIT
FEB 17 1998
JAN HORBALY
CLERK

KEARNS V WOOD MOTORS INC, 97-1565
(DCT - 78-70642)

APPENDIX S

The only Federal Court of Appeals for Patents has adversely decided the most important patent question affecting: inventors; U.S. foreign trade; and, the economy of the U.S.; under federal law, 35 U.S. Code § 154:

> § 154. Contents and **term (whether infringed or not)** of patent
>
> Every patent shall contain a short title of the invention and a grant to the patentee, his heirs or assigns, for the **term (whether infringed or not)** of seventeen years, subject to the payment of fees as provided in this title, of the right to exclude others from making, using, or selling the invention throughout the United States, referring to the specification for the particulars thereof. A copy of the specification and drawings shall be annexed to the patent and be a part thereof. As amended July 24, 1965, Pub.L. 89-83, § 5. 79 Stat. 261; Dec. 12, 1980, Pub.L. 96-517, § 4, 94 Stat. 3018.
>
> **1980 Amendment.** Pub.L. 96-517 substituted "payment of fees" for "Payment of issue fees".
>
> **1965 Amendment.** Pub.L. 89-83 added "subject to the payment of issue fees as provided in this title."

The question before this Supreme Court, namely,

> Whether Congress' use of **'term'** (singular) of 17 years, **whether infringed or not**, as contrasted with a 'quantity' of 17 years tolled in accord with two new U.S. supreme law truths that satisfy the **"for limited times"** clause of Const. Art. I § 8 cl 8 *infra* is unConstitutional.

has not yet been decided by the U.S. Supreme Court, but should be settled by this Supreme Court, in view of: the Court of Appeals for the Federal Circuit panels' admission *infra* in this case; when Dr. Kearns' algebraic, logically-derived, two "new" 'supreme law of the land' truths *infra* were presented to them; that are supported and endorsed by Mathematical-Logic Professor Mergler, Ph.D. of Case Western Reserve University; that start with Const. Art. I § 8 Cl 8 as the premise.

The only Federal Court of Appeals for Patents panel admitting in their written decision, in response to Dr. Kearns' two 'new truths' algebraically derived from Const. Art. I § 8 clause 8 ("Clause 8"), writing, in part:

> "Dr. Kearns claims that the limited times (plural) refer only to those instances when the inventor is in possession of true exclusive rights to the invention, and that any time during which the inventor's exclusive right is abrogated, as when an infringer is also practicing the invention, cannot be counted against the patent's term (singular) of years. ... Although recognizing that more than 200 years of legislative enactments and judicial decisions contradict his position, Dr. Kearns maintains that the Constitution requires us [Judicial Branch; Legislative Branch and Executive Branch] to accept his theory." [Kearns: *actually* the 'new truths' are mathematical-logic derived equation-proofs not a theory.]
>
> Dr. Kearns' Constitutionally derived two 'new truths' are in harmony with and, give meaning to, Clause 8's "for limited times" (plural).

Moreover, Providence has intervened with the timing, as Dr. Kearns' U.S. Patents were issued prior to the General Agreement on Tariffs and Trade Treaty ("GATT") with all signatory nations having already accepted revisions into said Treaty in accord with prior, existing, Constitutional law!

That has not yet been decided by the U.S. Supreme Court, but should be settled by this Supreme Court in view of the algebraic, logically-derived, two "new" 'supreme law of the land' truths *infra* by intermittent windshield wiper systems ("IW-WS") inventor, R.W. Kearns, Ph.D., where said derived equation steps and 'new truths' results: are supported by Mathematical-Logic Professor Mergler, Ph.D. of Case Western Reserve University; and, mathematically flow from the words of Const. Art. I § 8 cl 8 when used as a premise, which reads:

UNITED STATES CONSTITUTION

Article I, Section 8, Clause 8

"The Congress shall have the power:

> "To promote the progress of science and the useful arts by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries."

Said Court of Appeals per curiam decision included at p. 3, starting line 13:

> "The gist of Dr. Kearns' interpretation [of the Patent Clause of the Constitution] is that an inventor is entitled to an "exclusive right" to his invention and is not enjoying that exclusive right if anyone else is using the invention without his permission. Recognizing that the Constitution [and the Patent Act(?)] allow patents for only "limited times," Dr. Kearns claims that the limited times (plural) refer only to those instances when the inventor is in possession of true exclusive rights to the invention, and that any time during which the inventor's exclusive right is abrogated, as when an infringer is also practicing the invention, cannot be counted against the patent's term (singular) of years. [After the derivation equations are presented] Dr. Kearns concludes that because his patent rights have been continuously infringed by others [all his potential customers, the automotive

> assembly industry], he has never enjoyed true exclusive rights to his invention(s) and the terms of his patents therefore have not yet begun to run. Although recognizing that more than 200 years of legislative enactments and judicial decisions contradict his position Dr. Kearns maintains that the Constitution requires us [the Court of Appeals panel] to accept his theory [proofs]. (Emphasis added.)

Question: Is Congress' use of a 'term' of 17 years in 35 U.S. Code § 154 unConstitutional?

From Dr. Kearns' Informal Brief of Appellant in *Kearns* v. *Wood Motors, Inc. et al.* before the Court of Appeals for the Federal Circuit Appeal No. 97-1565:

Question 1: When does 'the "for limited times" of clause 8' start?

2B- 8 By Congress legislating the quantity of those "for limited times", Congress legislates not only that Congress chooses "to promote"[26] but also, Congress makes that standard of compensation to inventor Dr. Kearns complete as is proved *infra*.

2B- 9 Are the "for limited times" to be "secured" to the inventor at times different from when 'the "exclusive right" to the discovery' are to be secured? 'The "exclusive right" to the discovery' for no "secured" "for limited times" is what the inventor had when (s)he discovered the new knowledge. All (s)he had to do was not tell others of the discovery. No promotion of science and the useful arts occurs under those conditions. Therefore, the answer is, "No" and the "for limited times" are "secured" concurrently with the "exclusive right" in accord with the words ratified by the Founding Fathers at Const. Art. I § 8 cl 8.

---

[26] "Pursuant to this constitutional authority, Congress in 1790 enacted the first federal patent and copyright law, 1 Stat. 109, ..." *See*, *Sperry* v. *Florida*, 373 U.S. 379 (1963).

2B-10 'The "for limited times" of Clause 8' includes a
'first moment of "for limited times" of Clause 8.'

2B-11 'The "exclusive right" of Clause 8' includes a
'first moment of "exclusive right" of Clause 8.'

2B-12 Since 'the "for limited times" of Clause 8' and
'the "exclusive right" of Clause 8' occur concurrently,
it is also true that,

'the first moment of "for limited times" of Clause 8'
is granted concurrently with
'the first moment of "exclusive right" of Clause 8.'

We pause here to ask, "Can an infringement exist at
'the first moment of "exclusive right" of Clause 8?'"

The answer depends upon the legal actions of the inventor or patentee to whom the patent is granted.

2B-13 In 35 U.S. Code § 102(b), the patent law allows the inventor to lose control of the discovery before the publication date of the patent during less than a year before application.

> "A person shall be entitled to a patent unless—
>
> (b) The invention was ... in public use or on sale in this country, more than one year prior to the date of the application for patent in the United States ... ."

2B-14 In 35 U.S. Code § 122, the inventor may lawfully tell others of her(is) discovery during the time of review within the Patent Office.

> Applications for patents shall be kept in confidence by the Patent Office and no information concerning the same given without authority of the applicant or owner unless necessary to carry out provisions of any Act of

Congress or in such special circumstances as may be determined by the Commissioner. July 19, 1952, c.950, § 1, 66 Stat. 801.

Dr. Kearns asks, When does 'the "for limited times" of clause 8' start?

2B-15 The start of "for limited times" equals 'the first moment of "for limited times" of clause 8.'

2B-16 Substituting into 2B-12, 'the start of "for limited times" of clause 8', for 'the first moment of "for limited times" of clause 8' we obtain:

'The start of "for limited times" of clause 8' occurs with 'the first moment of "exclusive right" of clause 8.'

which is the answer to the question Dr. Kearns asked.

Question 2: Are the "for limited times" of clause 8 granted concurrently with adjudged infringement?

2B-17 Having done that much, we note as in 2B-10,

'The "for limited times" of Clause 8' includes an 'intermediate moment of "for limited times" of Clause 8.'

2B-18 and, as in 2B-11,

'The "exclusive right" of Clause 8' includes an 'intermediate moment of "exclusive right" of Clause 8'

2B-19 Substituting 2B-17 and 2B-18 into 2B-12 we obtain,

2B-20 'the intermediate moment of "for limited times" of Clause 8' occurs with 'the intermediate moment of "exclusive right" of Clause 8.'

2B-21 Similarly, from 2B-12 no '"for limited times" of Clause 8' is granted concurrently with no '"exclusive right" of Clause 8.'

2B-22 No '"exclusive right" of Clause 8' equals infringement.

2B-23 Substituting "infringement" from 2B-22 for
No '"exclusive right" of Clause 8'
into 2B-21 we obtain,

2B-24 No '"for limited times" of Clause 8' is granted concurrently with infringement.

2B-25 That is, the "for limited times"-life-clock stops when infringement occurs intermediate into the inventor's "for limited times" until the inventor's "exclusive right" is re-established through the 35 U.S. Code § 281 'remedy' civil action.

2B-26 When infringement is adjudged, the 'remedy' includes that the civil action occurred under a stopped life-clock, and, as the life-clock was stopped from the first moment of "use"[27] the life-clock was stopped from the first moment leading to the manufacture of the product adjudged infringed.

2B-27 Should the applied-for-patent not be published at the time of first "use", the patent life-clock does not start [*see*, fact 2B-25] until all alleged infringements have been 'remedied' in 35 U.S. Code § 281 patent infringement civil actions.

2B-28 Once the life-clock has started, over-all, this means that the "for limited times" can resume and stop; resume and stop; and resume and stop, giving meaning to the plural "for limited times" in Const. Art. I §8 cl 8.

2B-29 While these Dr. Kearns-Proofs are different results than the present practice of the Judiciary, it has been proved that, the Constitutional standard of compensation to inventors is *complete* in Art. I § 8 cl 8 when Congress establishes the quantity of times and means Congress' use of the phrase "term of 17 years" is unConstitutional and Congress can only set the quantity of time at, say, 17 years with the total span of the quantity of time depending upon the "success" of the invention, using the word "success" to mean the invention is infringed more times by more infringers.

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[27] "But if the products of the experiment are sold, or used for the convenience of the experimentor, or if the experiments are conducted with a view to the adaptation of the invention to the experimentor's business, the acts of making or of use are violations of the rights of the inventor and infringements of his patent." *Roche Products, Inc.* v. *Bolar Pharmaceutical Co.*, 733 F.2d 858, 862 (Fed. Cir., 1984).

2B-30 Thus, the Dr.-Kearns-Proofs mean litigation-delay will no longer be a defense to infringement and a burden to the schedules of the Judicial Branch in patent infringement cases.

2B-31 Nor will this be a large time-accounting problem for the Commissioner of Patents under 35 U.S. Code § 290, as from the Commissioner's statistics in the Appendix of the Commissioner's Annual Reports, of the more than 100,000 U.S. patents published each year, but 1,019 on average lead to the filing of a Complaint, and of those but 89 on average have a first day of trial.

2B-32 Nor is this a problem for the GATT Treaty, as the phrase,

> "unless this would be contrary to existing Constitutional requirements,"

occurs throughout the Uruguay Round Agreements, including, Article 46, *supra*, **and**, Dr. Kearns' U.S. Patents were published under 35 U.S. Code as amended July 24, 1965, Pub.L. 89-83, § 5, 79 Stat. 261; Dec. 12, 1980, Pub.L. 96-517, § 4, 94 Stat. 3018 **and** in the Uruguay Round Agreements' Title I, Subtitle A,

§ 102. reads:

> "(a) Relationship of Agreements to United States Law.—
>
> (1) United States Law to Prevail in Conflict.— No provision of any of the Uruguay Round Agreements, nor the application of any such provision to any person or circumstance, that is inconsistent with any law of the United States shall have effect."

Thus, when the CAFC panel accepts the content of this appeal

2B-33 it is acceptable to the World Trade Organization with benefits accruing to reduce the USA's nominally $10 billion per month trade deficit that began in the 1970s to benefit the standard of living of the USA populace as well as USA inventors and patentees!

* * *

For the reader to check the derivation of Dr. Kearns' two new truths, simply substitute each new truth back into Const. Art. I § 8 cl 8 and see if the result fits Const. Art. I § 8 cl 8.

* * *

Obviously, the single period 17 year quantity of time —— with the time counting down against the inventor whether adjudged infringement occurs or does not occur —— violates the plural "for limited times" of Const. Art. I § 8 cl 8 and violates Const. Art. I § 8 cl 8's "exclusive right" as well during periods (plural) of adjudged infringement as especially occurs with multiple adjudged infringers of a 'successful' invention like IWWS.

Here, in 35 U.S. Code § 281 'remedy' for patent infringement civil action *Kearns* v. *Ford Motor Company*, Ford admitted infringement and challenged the validity of four Kearns patents which were found to be valid by the *Ford* jury. In an infringement trial that was limited to the four valid patents, *Kearns* v. *Chrysler Corp.*, the jury found Chrysler to be an infringer, with evidence showing Chrysler 'using' Dr. Kearns' inventions before his first IWWS patent was even issued while in both cases the District Court Judge denied the motion of Kearns' lawyer for an evidentiary hearing at which he could present evidence of Kearns' right to 'equitable relief (time)' was denied, with Kearns' remedy being limited to money damages which constitutes a compulsory license from the Court while the addition of a compulsory licensing section to 35 U.S. Code was denied by Congress in *McFarland Compulsory Licensing Bill*; Hearing on H.R. 9259 before the O'Malley Committee, 75th Congress, 3rd Session (1938) (Exhibit) with Congress' single period of 17 years continuing to count against the inventor Dr. Kearns during the multiple times of use occurring during times of adjudged and admitted infringements.

When U.S. Const. Art. I § 8 cl 8
proffers to the inventor an "exclusive right"
should the inventor expect the Government to
"secure" to her(im) an "exclusive right" for
her(is) patented discoveries that is false?

The only Court of Appeals for Patents writes in their decision that 200 years of legislative enactments and judicial decisions contradict Dr. Kearns' mathematical-logic derivations' 'new truths' and that Court of Appeals panel answered, "Yes!, the Const. Art. I § 8 cl 8's "exclusive right" is not a true exclusive right!"

ARGUMENT

> "It cannot be presumed that any clause in the Constitution is intended to be without effect"

Marbury v. *Madison*, 1 Cranch 137, 174 (1803).

See, the frieze of John Marshall (1755-1835) on the wall in the Supreme Court and the inscription which reads:

> "Fourth chief justice of the United States, Marshall is considered the court's greatest leader. His opinion in *Marbury* v. *Madison* (1803), the first of his great cases, established the power of the Supreme Court to review laws for constitutionality, establishing the court's power to say what the law is.
>
> During his 35 years on the court, Marshall was instrumental in developing a unified body of constitutional law, strengthening the federal system and, most significantly for justices to come, generating public respect for the nascent (1. coming into being, being born) Supreme Court."

Notes from: *Interpreting the Constitution — The Supreme Court and the Process of Adjudication*, by Harry H. Wellington[1]

[1] is Sterling Professor of Law at Yale Law School. He was dean of the Law School from 1975 to 1985.

p. 56: "Of course, I also know that the Constitution itself is what was ratified, not the founders' intentions."

p. 72: "Legislators are under an obligation to work within the Constitution."

Consider, in *Kearns* v. *Wood Motors, Inc., et al.* that the evidence shows:

1) that Dr. Kearns' intermittent windshield wiper systems ("IWWS") are used on most automotive models throughout the world;

2) that Dr. Kearns' Kearns *Engineers* under export licenses from the U.S. Department of Commerce manufactured and exported his Computer Central® products to France and Japan;

3) that Dr. Kearns' IWWS products are used on 30,000,000 automobile-vehicles annually and, at $200 per windshield sub-assembly Kearns *Engineers* can hire 400,000 persons in the U.S. and pay them each, on average, $15,000 per year;

4) that engineers of SWF-SPECIALFABRIK fur AUT OZEBEHOR GUSTAV RAU G.m.b.H., a corporation of the Federal Republic of Germany admitted in a deposition held in Stuttgart, Germany (at Kearns' expense) that they received on March 28, 1968 **all** Dr. Kearns' U.S. patents from the U.S. Department of Commerce for a few dollars and began to sell Dr. Kearns' IWWS inventions, among others to: Daimler-Benz and Porsche in Germany and in France to Renault where 35 U.S. Code § 281 'remedy' for patent infringement civil actions are not applicable;

5) that in 1993, SWF bought the Delco Divison of General Motors Corporation [Ext App xx];

6) the accepted doctrine that patents are legal monopolies was formulated by Justice Clifford in the case of *Seymour* v. *Osborne*, 78 US 516 (1871);

7) in the earliest case in which those questions were considered at any length (A.D. 1831), the court adopted these three fundamental principles, which have been followed in all subsequent decisions:

   "A) a patent creates a contract between the inventor and the public, and that each party

> is bound to exercise good faith toward the other;
>
> B) a patent is not granted to the inventor as a favor, but is a matter of right on his compliance with the conditions prescribed by law;
>
> C) being intended for her(is) benefit, both the patent and the law are to be construed in favor of the patentee" as in *Whitney* v. *Emmett* (1831), Baldwin, 303, Baldwin J." (319)

* * *

> "A patent is a bargain with the public, in which the same rules of good faith prevail as in other contracts. ... (318) In England a patent is granted as a favor on such terms as the King thinks proper to impose; here a patent is a matter of right, on complying with the conditions prescribed by law. ... (322) Intended for their protection and security, the law should be construed favorably and benignly in favor of patentees in the spirit of the proviso in patents in England." 1 Robb, 567 (589, 587, 593).

Also, the evidence shows in *Kearns* v. *Wood Motors, Inc., et al.*, 35 U.S. Code § 281 'remedy' for patent infringement civil action, has not come to trial yet in the Federal Court of Detroit where it was filed on March 21, 1978 over 20 years ago!

Lipscomb's *Walker on Patents* continuing at § 8:3:

> "In the United States the superior right of an inventor to his invention has a far better foundation than could be furnished by the prerogative of any king. That foundation is the consent of the people of the

United States: a consent primarily expressed in the federal Constitution, and elaborately defined in the federal statutes. The Constitution was established as the supreme law of the United States on the twenty-first day of June, 1788. It conferred power upon Congress to promote the progress of the useful arts, by securing, for limited times, to inventors, the exclusive right to their respective inventions. [Article 1, Section 8, Clause 8.] In exercise of that power, Congress, on the tenth day of April 1790, enacted the first federal statute on the subject; and provided therein that the exclusive right in contemplation should be secured to the respective inventors, by means of a written grant from the United States, to be named Letters Patent. [Stat at L, Ch 7, p 109.]

Specifications of the patent, including the description and the claims, constitute a **contract** between the public and the patentee. *National Carbon Co*. v. *Western Shade Cloth Co*., 93 F2d 94 (1937, CA 7 Ill), *cert den* 304 US 570. ... The exclusive right granted by a patent is a monopoly which is only permitted due to the benefit gained by the public from the invention and the paramount concern of the patent law is the preservation of the public interest. *Lackner Co*. v *Quehl Sign Co*., 145 F2d 932 (1944, CA6 Ohio). ... . The Supreme Court in *Sears, Roebuck & Co*. v. *Stiffel Co*., 376 US 225 (1964) said, "The grant of a patent is the grant of a monopoly; ... ."

!!!

The accepted doctrine that patents are legal monopolies was formulated by Justice Clifford in the case of *Seymour* v. *Osborne*, 78 US 516 (1871).

!!!

In the earliest case in which those questions were considered at any length (A.D. 1831), the court adopted these three fundamental principles, which have been followed in all subsequent decisions:

(1) That a patent creates a contract between the inventor and the public, and that each party is bound to exercise good faith toward the other;

(2) That a patent is not granted to the inventor as a favor, but is a matter of right on his compliance with the conditions prescribed by law;

(3) That being intended for her(is) benefit, both the patent and the law are to be construed in favor of the patentee. In *Whitney* v. *Emmett* (1831), Baldwin, 303, Baldwin J." (319):

> "A patent is a bargain with the public, in which the same rules of good faith prevail as in other contracts. ... (318) In England a patent is granted as a favor on such terms as the King thinks proper to impose; here a patent is a matter of right, on complying with the conditions prescribed by law. ... (322) Intended for their protection and security, the law should be construed favorably and benignly in favor of patentees in the spirit of the proviso in patents in England." 1 Robb, 567 (589, 587, 593).